A SYSTEM OF MORAL PHILOSOPHY.

IN THREE BOOKS;

WRITTEN BY THE LATE

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SYSTEM
OF
MORAL PHILOSOPHY.

BOOK II. CHAP. IX.

Concerning CONTRACTS *or* COVENANTS.

A contract what.

A CONTRACT is "the consent of two or more in "the same design, mutually expressed with a "view to constitute or abolish some right or "obligation." We have already seen the necessity of frequent translations of property by consent of the proprietor, and of a constant, social intercourse of offices among men in giving mutual assistance. The law of nature requires and obliges us all to be ready voluntarily to do all kind offices in our power, and every good man is thus disposed; and yet express contracts about them are necessary among the best of men.

The necessity of them.

For tho' men are obliged to social offices, yet they are not bound, except humanity to the indigent requires it, to give their goods or labours to others for nothing. Such obligation would have all the bad effects of a community of goods. The wealthy need more frequently the labours of the indigent, and the indigent must be supported by the compensations they get for them. There must be mutual agreements about these things.

BOOK II. Again ſuppoſe the very beſt diſpoſitions in my neighbours toward me, and toward each other; yet I cannot take my meaſures in dependance on their aſſiſtance, without a previous contract. I muſt know their leiſure hours, the ſervices they can do me conſiſtently with their other duties of life; and they muſt know how far I can ſupply their wants, and aſſiſt them in their need, otherways they muſt concert their affairs with others who can anſwer their neceſſities. The reaſons therefore which ſhew the neceſſity of a ſocial life, ſhew alſo the neceſſity of contracts, and the obligation of faithfully obſerving them.

The grounds of obligation.

Some more immediate principles in our nature firſt ſuggeſt our obligation. Nature has given us the ſagacity to contrive means by ſpeech, or ſounds appointed to be the ſigns of thoughts, to communicate our ſentiments, deſigns, and inclinations to others, and has made us prone to communicate them by a natural openneſs of mind, till ſome experience of inconvenience from too much openneſs reſtrain us; we have alſo an immediate natural approbation of this diſpoſition; and a yet higher approbation of a ſtedfaſt veracity and candour in ſpeech, whether we are relating facts, or aſſuring others of our deſigns and intentions; and on the other hand have a natural immediate diſlike of a ſelfiſh ſullen dark taciturnity, and a yet higher diſapprobation of falſhood and inſincerity in narrations or profeſſions of our intentions or engagements, and of all intentions of deceiving others, and diſappointing them of what by our ſpeech we cauſed them

to expect from us. Such conduct also appears plainly injurious and affronting to our fellows, who have a natural desire to know the truth, and an aversion to error and deception; and who from our social constitution have a claim upon us that we shall not disappoint the hopes we have given them about any offices we undertake for them. These parts of our constitution more immediately suggest our obligation to faith in contracts, and the moral turpitude of violating them. CHAP. 9.

The guilt of violating them.

The violation of contracts, on this account, is plainly a greater crime, than refusing a like unpromised office of humanity which is in our power, when other circumstances are equal. The later shews indeed a want of the proper degree of social dispositions, but causes no new detriment in life. But infidelity in a contract offends also against a strong moral feeling in our hearts, and disconcerts the measures of others, who in dependance on the contract may have omitted to provide the assistance they might otherways have obtained. Such breaches of faith, were they frequent in society, must destroy all social commerce.

II. Tho' men are on all occasions obliged to act the humane prudent part toward others, and not to grasp at unreasonable advantages from their rash or weak engagements; yet so great is the necessity of maintaining faith in contracts, and the detriment to society from diminishing it, by allowing many evasions and inextricable disputes about contracts; that in all matters of commerce about which men are valid

BOOK II. diſpoſers, whatever contracts we make, not induced by any fraud or error in the known and profeſſed conditions or unjuſt violence, we are obliged to obſerve and fulfil, tho' we have contracted imprudently for our own intereſt, or even contrary to ſome imperfect obligations toward others. The other party acquires an *external right*, with which we are obliged to comply when it is inſiſted on; tho' he is acting againſt humanity and real juſtice in inſiſting upon it. To ſuch caſes the common maxim * is applicable, that "many things which ought "not to have been done, yet when done, are obliga-"tory.".

In what matters they are valid.

This rule holds generally in all matters of commerce † committed to human prudence, in all alienable rights, in ſuch actions or performances as are not directly impious toward God, nor oppoſite to ſome perfect right of another, nor to ſome ſpecial law prohibiting our tranſactions about them: contracts in which men ſin againſt ſome general law may be obligatory; or ſuch as are againſt the intereſts of their friends or families, where their right is only imperfect: ſuch contracts too muſt likewiſe be of ſome detriment to the publick. But the allowing men to recede from all imprudent contracts would be of far greater detriment, as it would obſtruct all commerce, or occaſion innumerable inextricable debates. Whoever repented of a bargain, could always plead the imprudence of it,

* *Plurima fieri non debent, quae facta valent.*

† Here moral writers regard chiefly the moral power, or right of adminiſtration or managing ſuch matters: the *principium vel facultas dans validitatem actui*, more than the prudence of what is done.

the loſs his friends or family would ſuſtain, its oppoſition to the general command of *providing for our own*, and to our obligations of humanity. All nations appear ſenſible of this, by confirming imprudent contracts about matters of commerce, and ſeldom allowing redreſs, except where the inequality or the loſs ſuſtained by one party is very great and manifeſt.

Three forms of ſpeaking about future actions, expreſſing our deſign.

III. The law of nature as well as civil laws diſtinguiſh three forms of ſpeaking about our future actions or preſtations. 1. A bare declaring our preſent intention or purpoſe: this produces no obligation. One indeed may be cenſured as inconſtant who often changes without cauſe.

Imperfect promiſes.

2. The ſecond is when we promiſe ſomething for the advantage of another, expecting his dependence on our promiſe, and yet not deſigning to convey to him any right to compel us to obſerve it. Such promiſes are well known to be conditional, upon the good behaviour of the perſon to whom they are made, even when this is not expreſſed; and we are underſtood to reſerve to ourſelves the right of judging of his behaviour. Receding from ſuch promiſes without a juſt cauſe, is very faulty in point of veracity, and muſt be highly diſapproved by every honeſt heart on that very account, as well as the cruelty and inhumanity ſometimes diſplayed in defeating the juſt hopes we had raiſed by another's dependence on our veracity. This conſideration ſhould make men both cautious of promiſing inconſiderately, and religiouſly careful not to depart from their promiſes without ſuffici-

BOOK II. ent cauſe, ſuch as muſt juſtify them to every honeſt man. But when one departs from ſuch a promiſe, the other party has no other perfect right than to demand compenſation of any damage he ſuſtained by taking his meaſures in dependence on the promiſe; ſubmitting it to arbitration whether his deportment gave juſt cauſe of departing from the promiſe, or not; and whether his meaſures taken in conſequence of it were juſtifiable. If he is juſtified by proper arbitrators, he has a perfect right to be indemnified; but cannot, even ſo, compel the performance of the promiſe.

Perfect contracts.

3. The third form is a perfect contract or promiſe, not only binding in point of veracity and conſcience, but conferring a perfect right to another.

What ſigns binding.

IV. In contracts 'tis by one's own conſent that we deem him obliged. And he is juſtly deemed to conſent who uſes the ſigns which commonly import conſent. No exception can be allowed upon any alledged ſecret diſſent or different intention not imparted to others*, or upon any roving of mind or inadvertence alledged while he was uſing ſuch ſigns as declared his conſent; otherways all contracts might be eluded by ſuch pretences, which could not be confuted.

Tacit conventions.

Words or writing declare our conſent moſt diſtinctly, but it may alſo be declared abundantly by any other ſigns previouſly agreed upon by the parties as evidences of conſent. When any ſign is agreed upon and uſed with that profeſſed deſign, 'tis an expreſs contract. But there are alſo certain actions which in

* *De non apparentibus et non exiſtentibus idem eſt judicium.*

their own nature import a consent to covenants or conditions proposed. Thus if certain advantages are offered to such only as subject themselves to certain engagements or obligations; he who assumes these advantages which he could not claim except upon the offer made, is justly deemed to have subjected himself to the conditions or obligations expected by the other party. So when one acts what no reasonable man would do without consenting to certain articles, or what is universally taken for a consent to them, he is justly reputed to have consented to them. These are tacit contracts or conventions. The obligation of such significant actions may indeed always be prevented by express premonition of all concerned, to the contrary. And in this the tacit contracts differ from the *quasi-contractus*, or the *obligatio quasi ex contractu* of the civilians. In these later the obligation is founded in some obvious maxims of justice, upon some action of the person obliged, or his deriving to himself some advantage at the expence of others who neither intended to be at such expence gratuitously, nor were obliged to it. No premonition or remonstrance will free a man from these obligations, of which hereafter. But in tacit contracts the obligation arises only from consent, which is as naturally intimated by action, as it could be by words; and therefore an express previous declaration to the contrary may take away all cause of presuming upon consent. CHAP. 9.

Examples will best explain both. When lands are offered only to such as are willing to settle in a colony *Examples of them.*

BOOK II. upon certain conditions of civil ſubjection; one who takes poſſeſſion of ſuch lands, is deemed to conſent to the conditions. A foreigner ſettling with us, and ſharing the protection of our laws and polity, tacitly conſents to be ſubject to ſuch of our laws as oblige foreigners, and to our courts of juſtice. An heir poſſeſſing an eſtate ſubjected by the anceſtor to this condition that all who enjoy it ſhall be ſubject to ſuch polity and laws, tacitly conſents to this ſubjection. If he previouſly declares againſt this ſubjection, he is not bound by it; but the ſtate may perhaps juſtly prevent his poſſeſſing theſe lands, as it would prevent the reſidence of a foreigner who previouſly refuſed ſubjection to our laws. Addreſſing ſpeech to another imports a convention of ſpeaking according to our ſentiments, and uſing words in their cuſtomary ſenſe; otherways the action would be fooliſh. But timely premonition that the ſpeaker only pronounces abſurd propoſitions as examples in logick, would prevent the obligation: theſe are tacit conventions. But an heir poſſeſſing an inheritance, or an executor the perſonal eſtate, are * lyable to pay the debts and legacies which affect the eſtate, and no premonition of the heir or executor can prevent this obligation which they ſay ariſes *quaſi ex contractu.*

Valid exceptions againſt contracts. Want of reaſon.

V. From the nature of property and the ways of conveying it, it may often happen that men become

* In the civil law the obligation of the heir to pay debts is not called a *quaſi-contractus*, but he is ſuppoſed by a *fictio juris* the ſame perſon with the deceaſed. This is a ſubtilty of law; the natural reaſon of obligation is the ſame as that to pay legacies, which they ſay ariſes *quaſi ex contractu.*

proprietors before they have knowledge of the value of their goods, or the uſe of reaſon to manage them. 'Tis plainly for the good of ſuch, and for the publick intereſt too, that ſuch perſons be kept from the diſpoſal of their goods, or entering into any important contracts, till they attain to ſome tolerable knowledge of human affairs. Men diſordered in their reaſon by ſickneſs, or madneſs, are in the ſame caſe. On the other hand 'tis plainly unjuſt to reſtrain men of ſufficient wiſdom from the exerciſe of the duties of life, and the enjoyment of their property. Men attain to maturity at very different ages. Before civil laws, the maturity of reaſon, when any diſpute aroſe upon this exception againſt a contract, could be determined only by the arbitration of ſuch who knew the ordinary conduct of the perſon at the time of the contract. By the law of nature one is obliged by any equitable contract he entered into at any age, provided he knew what he was doing. But to prevent frauds and vexatious tryals about the maturity of reaſon, which too muſt at ſeveral times be determined as to the ſame perſon according to the different ſubjects about which young people may have occaſion to tranſact, and that men may have at laſt ſome ſecurity againſt the inextricable exceptions about the mature reaſon of the perſons they have to deal with, 'tis abſolutely neceſſary that in civil ſociety ſome poſitive law ſhould fix a certain age in a prudent medium, ſo as to admit as few as poſſible to manage their affairs before maturity of reaſon, and yet exclude as few as may be after

BOOK II. they have attained it. The exception of a phrenzy is more easily determined by arbitrators or judges.

Minority. The Roman law about minors, now partly received over Europe, had great conveniencies. To the age of fourteen compleat in males, and twelve in females, they acted nothing validly. Tutors acted in their names. After these years the minor acted, but nothing was obligatory, without the consent of curators, until he had compleated his twenty-first year. In earlier times this term was delayed to the twenty-fifth year. In this period a minor was made acquainted with his affairs, as the curator could not act without him, and he might be a check upon any fraudulent design if he had attained to any wisdom; while the superior prudence of the curator prevented the minor from hurting himself. The law to prevent the frauds minors are exposed to, gave them leave to recede from any contract entered into without consent of curators before maturity, tho' they might be obligatory in conscience, and are so always where there is no iniquity in them, and the minor knew what he was doing at the time of contracting. After the twenty-first year compleated, they were capable alone of all legal action, except finally discharging their curators; for doing this validly they were allowed the further experience of four years.

But as a minor should not be injured by imprudent contracts; so he is obliged, after coming of age, to let no man suffer by any equitable contract entered into with him during his minority, out of real kindness

or confidence of his integrity, without any fraudulent design, even tho' civil courts do not confirm such contracts. And courts of equity always sustain whatever was prudently advanced for the maintenance or education of a minor in the absence of his parents, or curators, as a just debt upon him. CHAP. 9.

'Tis pleasant to observe how those authors who paint out our nature as a compound of sensuality, selfishness, and cunning, forget themselves on this subject in their descriptions of youth, when the natural temper is less disguised than in the subsequent parts of life. 'Tis made up of many keen inconstant passions, many of them generous; 'tis fond of present pleasure; but 'tis also profusely kind and liberal to favourites; careless about distant interests of its own; full of confidence in others; studious of praise for kindness and generosity; prone to friendships, and void of suspicion.

VI. The contracts of such as are manifestly disordered in their reason by drunkenness, are not obligatory, as 'tis fraudulent in one to entice them into contracts during such disorder. If my disorder was not known to others, I am plainly obliged to compensate any damage occasioned by my contracting, tho' I am not bound by it. A disorder I have culpably brought on myself can never free me from this obligation; tho' it may from that of a contract. Men are not obliged to preserve themselves always in a capacity for contracting with others, otherways they should never fall asleep. But they should always prevent their doing hurt to others, and take precautions against any *Drunkenness.*

BOOK II. thing in their conduct that may be injurious. If they do not, they are bound to make full compenſation.

Mutual conſent neceſſary.

VII. To the validity of contracts mutual conſent is neceſſary; and that even in donations, as well as other tranſlations of right. In donations indeed the conſent of the receiver is eaſily preſumed; and yet if he accepts not, the property is not altered. The proprietors can ſuſpend their conveyances upon any lawful conditions or contingencies they pleaſe. Preſent acceptation is not always neceſſary; as in legacies to perſons abſent; and in all conveyances to infants. No man indeed acquires property againſt his will, or untill he conſents to it; but the granter may order the property to remain in ſuſpenſe till it can be accepted by the grantee; or may commit the goods to truſtees till the grantee ſhews his will to accept them. Goods may thus be preſerved in ſuſpenſe for the benefit of perſons unborn.

All this is very intelligible if we remember that property is not a phyſical quality; and that all intended in this doctrine is this, * that ſuch management of goods is humane to individuals, and conſiſtent with, nay conducive to the good of ſociety; and that a different conduct would be inhuman toward the grantees, or the perſons concerned for them, and hurtful to ſociety. If property were a phyſical quality, it muſt indeed have a preſent ſubject.

If the child when come to maturity declines to accept, no man can force him to it; the goods remain

* See the preceding chap. § 3.

with the granter, or ſuch as have a right to ſucceed to him. But from the ſure proſpect we have that valuable grants will be accepted, we uſually call the grantees proprietors, as ſoon as the conveyance is compleated. CHAP. 9.

Defects of the Conditions.

VIII. In contracts made upon a *condition* there is no obligation unleſs the condition exiſts. A *condition* is properly "ſome event, now uncertain, upon the exiſtence "of which the force of the contract is ſuſpended." And 'tis always diſtinct from the mutual preſtations ſtipulated, and from the conſent of the parties. In the Civil law a condition is an event which has not yet happened. If the event exiſted at the time of the contract, tho' unknown to the parties, the contract was called abſolute. If it was then impoſſible, there was no contract. This needleſs diſtinction was of no moment in contracts, tho' it made a great difference in conditional legacies, and inheritances. If the heir died before the exiſtence of the condition, tho' it afterwards exiſted, the eſtate paſſed from his family to another. If it exiſted before his death, tho' it was unknown, the eſtate continued in his family. Theſe are unreaſonable ſubtilties.

Theſe conditions alone can affect the obligation of a contract which are either expreſſed in the contract as conditions, or which are underſtood as ſuch from the nature of the affair by all men of underſtanding; or ſuch events as one party aſſerted to another and undertook for the exiſtence of them in the tranſaction, which conſequently the other party may be preſumed

BOOK II. to have made the condition of his consenting. To allow exceptions against contracts from the non-existence of any event or circumstance which one of the parties alledges he secretly had in view, while such things are not commonly expected or understood as conditions in such transactions, would make all contracts uncertain.

Many tacit conditions.

In many of our common promises and contracts many conditions are universally understood to be adjected tho' they are not expressed; this all men of sense conclude from the nature and importance of the matter we are employed about. Thus if one promised his assistance to-morrow to his friend in any common business, this condition is always understood "provided "he continues in health, and no calamity befals his "own family or friends, in which his aid may be of in- "comparably greater consequence than the assistance "promised." Should a man's own house take fire, or any great distress befal his family, he is free from the obligation. In like manner when one promises implicitly at the desire of another to grant him a request he has not yet expressed, 'tis always understood, "pro- "vided the granting it be lawful, not contrary to pi- "ety, or any right of another; provided the favour re- "quested be one of these friendly offices which a good "man can reasonably ask of his friend." If it have not these qualities, there shall be no obligation.

Error and fraud as to the object.

IX. He who mistook the very object of the contract, or was deceived in these qualities for which such goods are commonly valued and desired, is not obli-

ged by the contract. He bargained for different things from thoſe obtruded upon him. He ſhould reſtore or compenſate whatever he received on account of the contract from which he now recedes. When one's own folly or negligence occaſioned the miſtake, by expecting ſuch qualities as are not uſually expected in ſuch goods and for which the other did not undertake, he is bound by the contract; otherways all contracts might be eluded upon pretence of diſappointment in ſome ſuch ſecret hopes. If the miſtake or deception has only been about the current value or mercat price, or about ſome fact quite foreign to the preſent ſubject of the bargain, without any fraud of the party I deal with, I am bound; but have in the former caſe a perfect claim to have the price lowered to the current value; and in the later, have a claim in humanity, when I can ſhew that I was led into the contract by miſtake, to be freed from it, if it occaſions no loſs to the other party; or if I am willing to compenſate it. But this I can ſeldom inſiſt on as a perfect right.

Obligation to ſincerity.

In all contracts good men ſhould uſe all poſſible candour in diſcovering the qualities and circumſtances which raiſe or lower the values of the goods; and are bound to reſtore where too much is received, or add where too little was given. This conduct tho' not very common, is neceſſary to ſatisfy an honeſt heart. 'Tis alſo our duty to releaſe others from inconvenient bargains upon receiving compenſation of any loſs we ſuſtain by the diſappointment. In all theſe affairs 'tis of great uſe to examine well the feelings of our own

BOOK II. hearts, and to consider how we should like such conduct toward ourselves as we are intending toward others *. This prepares the heart for an impartial discernment of what is just and honourable, and what not, by making the selfish passions operate a little on the other side. And thus the *moral faculty* shall be freed from their byass and their sophistry, and all humane sentiments in favour of the other party shall occur to us. There cannot be a more useful piece of self-discipline in all our dealings with others.

Unjust force and fear of two sorts.

X. The next class of exceptions from the obligations of contracts are those from unjust force and fear. Fear affecting contracts is of two sorts; sometimes we intend by it a suspicion that after we have performed on our part, the other party will decline his part. In this case 'tis plain that he who contracts with one who disregards avowedly all faith and honesty, without having proper means to compel him, acts very imprudently, and yet the contract is not void. Where there is just ground for this suspicion, one has a right to defer performing on his part, till the other either performs his part first, or gives sufficient security for it. When he

* *Matth.* vii. 12. This excellent rule is mistaken by some authors, who without acknowledging any prior principle of moral reasoning, or any inward immediate taste of action, would make this proposition an axiom whence they would deduce all rules of conduct. 'Tis not useful this way. A miser desires an exorbitant price when he sells: he's not obliged to give it when he buys. A lewd person desires that others should yield to his solicitations: should he therefore yield to the solicitations of others? The person indicted wishes to be absolved tho' he is guilty. Is it therefore his duty, were he sitting in judgment, to absolve the guilty? The axiom needs these two limitations, 1. that the desire be just, and again that circumstances be equal. The former must presuppose the rules of justice previously known: they cannot therefore be inferences from this axiom.

does either, a good man ſhould obſerve his contract with him were he the worſt of mankind. CHAP. 9.

Faith obligatory toward the worſt of men.

No tenet can be of more horrid conſequence than this, that "bad men have no valid rights, or that good "men are under no obligations to them," whether they are deemed bad on account of practices, or of opinions we may call hereſies. The laws of God and nature bind us to conſult the happineſs even of the worſt of men as far as it conſiſts with that of the more uſeful members of the great ſyſtem, and to do them all good offices which do not incourage them in their vices. To obſerve lawful covenants voluntarily entered into with them is ſo far from encouraging their vices that it has the contrary tendency. It ſhews them the beauty of integrity, and its uſefulneſs even to themſelves. The contrary practice gives them an example of injuſtice, and provokes them to it. They conclude that there is no honeſty; that all pretences to it are hypocriſy; that their own infamy is unjuſt, ſince others are no better. The moral characters of men are not unalterable; ſome who were once diſtinguiſhed in wickedneſs have become eminent in virtue: no man is unworthy of our care.

Again, how dangerous muſt this tenet be while it is ſo hard to judge of the moral goodneſs of others, and men are ſo frequently led by prejudice and party-zeal into the moſt unfavourable opinions of the beſt of men, and then by this tenet they are doomed by us to have loſt all the rights of mankind. None are free from all faults. And how ſhall we fix that degree of

BOOK II. vice which forfeits the common rights of men, or makes them incapable of acquiring any. This tenet cannot take place even againſt ſuch as avowedly diſregard all laws of God and nature. Even ſuch men forfeit only thoſe rights the denying or non-obſervance of which is neceſſary for the ſafety of others againſt their injuſtice and violence, as we ſhall ſhew hereafter.

That threatened by one of the parties, or by others.

XI. Another ſpecies of fear affecting contracts is when one is moved to contract or promiſe by ſome evil threatened if he do not.

Here 1. If I contract with any honeſt man for his aſſiſtance againſt any evil unjuſtly threatened by a third perſon; the contract is obligatory: the aid given againſt ſuch dangers deſerves compenſation, as well as any other ſervice.

2. If the dread of ſome great evil unjuſtly threatened by one, compels me to contract with a third perſon not in concert with him who compels me, and unapprized of my being compelled: the contract ſeems void when I can make proof that this dread alone engaged me to it; ſince it had not that free conſent which ſeems neceſſary in contracts. And yet I am plainly obliged to compenſate all loſſes any innocent man has ſuſtained by my means, in order to ſecure me from danger.

3. Contracts to which one is compelled by fear upon the juſt ſentence of a judge, are painly valid, ſince the ſentence is juſt. An external right often attends the ſentences of judges which are not juſt, and men out

of duty to the ſtate or civil conſtitution, to which they have ſubjected themſelves, may be obliged to comply with them, when no peaceable means can prevail with the other party to remit his external claim, as it becomes a truly good man to do. CHAP. 9.

Rights valid from publick treatics.

4. In caſes where the perſon with whom I make the contract has extorted it by his own unjuſt violence, a diſtinction muſt be made between "violence really unjuſt, yet upon ſuch ſpecies of reaſons as may impoſe upon men whoſe general purpoſe of life is to act juſtly;" and that "violence which is uſed without any ſhew of right by men who openly renounce all regard to the ſocial laws of mankind." The former ſort of unjuſt violence at leaſt, muſt ever be on one ſide in all the ſolemn wars of nations, and in all civil wars: and ſometimes there is unjuſt violence of the latter ſort even in theſe publick wars. More frequently indeed there are even on the unjuſt ſide in publick wars ſuch ſpecious pretences, as through the ſecret influence of the paſſions of ambition, zeal for one's own ſide, or deſires of advantages, may impoſe upon men to believe their cauſe to be juſt: and many in lower ſtations upon the unjuſt ſide are under invincible ignorance of the injuſtice. The ſide which is really unjuſt, cannot by violence obtain any perfect right which they can uſe with a good conſcience: what is taken ought to be reſtored, and the promiſes or contracts extorted ſhould be remitted again. And yet where there are ſuch ſpecious reaſons on their ſide, there is an external right acquired by treaties obtained. The other

BOOK II. ſide are under an obligation, out of regard to the general intereſt of mankind, not to violate ſuch treaties, tho' very diſadvantageous to themſelves and naturally iniquitous; at leaſt, while they are not quite inconſiſtent with their liberty, independency, and enjoyment of the grand rights of mankind, for ſecuring of which all theſe laws of nature are conſtituted: unleſs they can prevail upon the victorious ſide to releaſe them from their covenants, they are bound by them. Some extraordinary pleas of neceſſity may make juſt exceptions from any general rules which can be found out in thoſe matters. Of theſe hereafter.

For what reaſons.

The grand reaſon of our obligation by ſuch treaties really unjuſt, is this, that if they were held as of no effect, if the exception of the unjuſt violence by which they were extorted were ſuſtained, no treaty could have any effect to put an end to wars. They muſt be ended only by the ruin or entire ſlavery of one ſide, as each ſide would have this exception of unjuſt force to renew hoſtilities upon againſt the treaty, whenever they inclined. This exception therefore is always underſtood as precluded in publick treaties of peace.

Theſe hold not for pirates and robbers.

5. But where violence is avowedly unjuſt, without any ſuch colours of right as could impoſe upon a good man, which ſometimes has been the caſe in publick wars; or when perſons by the courſe of life they betake themſelves to, renounce all regards to law and juſtice, as bands of pirates and robbers; the caſe is very different. Such perſons by the whole tenor of their lives ſeem to abdicate all rights and claims founded on the

ſocial law of nature; as they directly and avowedly op- CHAP. 9.
poſe the whole foundation and end of that law, the happineſs of mankind. The publick intereſt, the end of all law, requires that ſuch avowed enemies of all ſhould be deſtroyed, and ſhould hold no benefit by thoſe laws, which they renounce in this very act of extorting promiſes by unjuſt violence. The non-obſervance of ſuch promiſes cannot hurt ſociety; but the obſervance may, as it puts good men more in the power of ſuch monſters, and makes this monſtrous life more advantageous and inviting. If none regarded ſuch promiſes, they would not be extorted. Robbers would expect no more than their preſent ſpoils. Can one be under obligation in the uſe of ſpeech to ſuch as renounce all right and obligation? Sure ſuch manifeſt renunciation may releaſe from the alledged tacit convention in the uſe of ſpeech. When one allows me to ſpeak without expreſſing my own ſentiments, I may do ſo without a fault, as the hearer has relinquiſhed his right. As rights are acquired in tacit contracts, and the *quaſi-contractus*, by action; rights alſo may be renounced and abdicated by action, or forfeited by it, whether the agent directly intended it, or not.

We owe indeed good-will to the worſt of men, and ſhould do them ſuch good offices as conſiſt with the publick good. But pirates and robbers, or ſuch as ſhew the ſame ſpirit in higher ſtations or offices, are the avowed enemies of mankind. We ſhould deſire their reformation, and avoid uſeleſs cruelties toward

This not oppoſite to univerſal good-will.

BOOK II. them when they are in our power. But our regard to the general intereſt muſt recommend to us all the neceſſary means of putting a ſtop to ſuch a courſe of life, and to prevent their reaping any advantage by ſuch avowed hoſtility to mankind, and abdication of all laws.

When they have a right by contracts.

If indeed we have contracted with ſuch perſons without compulſion in the ordinary matters of commerce, we are faulty in maintaining commerce with them; and civil laws juſtly refuſe them any action upon ſuch contracts: but yet unleſs we are prohibited by the laws of our country, we ſhould obſerve our contract, or reſtore whatever we have received. In theſe acts no force was ſuppoſed, and by our voluntarily contracting with ſuch men when we knew their characters, we ſeem to have tacitly renounced that exception founded upon the general tenor of their lives.

If ſuch perſons ſhew any diſpoſition to reform, and return to a ſocial life, as 'tis poſſible for the worſt to amend; whatever a ſtate or community has voluntarily promiſed to them without immediate compulſion, ſhould be religiouſly executed as to their impunity, or retaining their preſent poſſeſſions, ſince in a voluntary treaty with them the exception which ariſes from their courſe of life is tacitly renounced. 'Tis fooliſh indeed to truſt their bare promiſes. But if they offer real ſecurities by firſt ſurrendering arms, ſhips of force, or forts, in which their ſtrength conſiſted, a treaty ſecuring to them impunity may be ſometimes the wiſeſt method of preventing future miſchiefs without effuſion of blood. Granting ſuch men im-

punity, and the enjoyment of their ſpoils, has of it-ſelf a bad tendency, and muſt move our indignation; but there may ſometimes be potent reaſons to juſtify it, and then compenſation ſhould be made out of the goods of the community to ſuch private perſons as for publick reaſons are thus precluded from claiming it from thoſe who injured them.

Impoſſibility of the matter natural and moral.

XII. To the validity of a contract 'tis neceſſary that the matter of it be poſſible. We call that *naturally* poſſible which we can get accompliſhed when we incline, by ourſelves or others. And that is called *morally* poſſible which no law prohibits.*

As to the exception againſt contracts from natural impoſſibility; if what ſeemed poſſible when we contracted, becomes or appears afterwards to be impoſſible, we cannot be bound to it; but whatever was given to us or performed on account of it ſhould be reſtored or compenſated. When one knew at firſt the impoſſibility of his part, or deſignedly afterwards made it impoſſible, but fraudulently engaged the other to perform his part firſt, the fraudulent party is not only obliged to † compenſate the damage, but to make good the value of the bargain, or all the profit the other could have made, had the contract been faithfully executed ‡. Where there has been no fraud, but only inadvertence in ſuch contracts, 'tis generally enough that the damage be compenſated by him who was culpably inadvertent.

* *Nihil poſſumus niſi quod jure poſſumus.* † *Penſare damnum.* ‡ *Penſare quod intereſt.*

BOOK II. How far the matter of contracts ſhould be lawful may appear from what was ſaid above.* We cannot bind ourſelves to any thing directly impious toward God, but our duties of worſhip are not fixed invariably to certain times. A man may be bound by contract to ſuch offices as may vindicate his omiſſion of external worſhip at the ordinary times of it. But he cannot be bound either to evil affections, or any acts of impiety which naturally evidence ſuch affections, ſuch as blaſphemy, or abjuring the religion he judges to be right. Urgent offices of humanity which cannot be delayed, juſtify the poſtponing of worſhip for ſometime, for mercy is at all times more acceptable to God than ſacrifice. Were indeed the omiſſion of publick worſhip demanded as a ſymbol or teſtimony of our concurrence in idolatry, or of renouncing the true religion, no promiſe or contract, or prohibition of a civil ſuperior, could juſtify ſuch omiſſion. And in many caſes the moſt open † oppoſition to ſuch prohibitions would be heroick.

Moral poſſibility diſtinguiſhed.

In like manner tho' contracts may oblige us in matters of commerce contrary to the imperfect rights of others, when we contracted without a fraudulent deſign knowable by the other party: yet where the fraudulent deſign muſt appear, as if one conveyed ‡ by contract or promiſe to any perſon or ſociety all that portion of his wealth which ſhould otherways be employed in humane or grateful offices, declaring that it was that portion; and that he conveyed it to evade

* Sect. 2. of this chap. † *Daniel* vi. 7.—11. ‡ *Matth.* xv. 5. *Mark* vii. 11.

such obligations, the deed is invalid as being fraudulent on both sides. The ascertaining of commerce requires that contracts conveying perfect rights should take place of duties of humanity, where both cannot be fulfilled, provided such contracts are made without a fraudulent design. But where such designs are known on both sides, there is no reason for sustaining them as valid.

No contract binds where there was not a moral power of contracting.

When contracts are made about matters we had no moral power to contract about, if this was known on both sides, or both sides were equally culpable in their ignorance of it, the contracts are void. Either party repenting before any thing unlawful is executed, is free from the engagement; but then one should not retain any price or consideration given in view of it. If the fact is committed by one who was invincibly ignorant of its unlawfulness, he has a right to what was promised; especially when the guilt would only affect the other party. As when any officer of justice executes a writ at my suit against my friend or benefactor whom I am inhumanly or ungratefully prosecuting. If both knew the guilt of the action, and it equally affected both; or both were criminally ignorant of its guilt, and the fact be committed; no right should arise to either side from such contracts or actions. The executor should not receive the reward of his iniquity. If it has been previously received, the hirer should not get it restored. No advantages or hopes of gain should attend such engagements or actions; they should be discouraged by all means. If the un-

BOOK II. dertaker has received the price before the execution and relents, he ſhould not indeed retain it; nor yet ſhould he reſtore it to one more criminal than himſelf. It ſhould go to ſome publick uſe.

One who contracts or promiſes about the goods of others and mutually known to be ſo, is only then bound to uſe all lawful means to obtain them from the proprietor. When theſe are ineffectual he is in the caſe of ſuch as contracted for impoſſibilities. If the promiſer may be preſumed to know this right of a third perſon while the other party is ignorant of it, the promiſe is fraudulent, and binds to the making good of the value of it to the innocent party.

What contracts are preferable to others.

XIII. Of two covenants conveying to different perſons the like right to the ſame thing, the * prior muſt take effect. All commerce would be uncertain if a ſubſequent contract could defeat a prior of the ſame nature. The ſecond contract is in the caſe of an impoſſible contract fraudulently made, and is to be judged of by the ſame † rules. Where the contracts are of different natures, one conveying a real, the other a perſonal right to obtain the ſame thing, the real right will take place of the perſonal tho' prior to it, for reaſons above-mentioned‡. The perſonal contract is in the caſe of thoſe made about impoſſibilities, and has the ſame moral effects. If indeed the prior perſonal or unfiniſhed contract was previouſly known to both the parties in the ſubſequent real contract, the ſubſequent

* *Qui prior tempore potior jure.* † See ſect. 12 of this chap. ‡ See chap. v. ſect. 1. of this book.

being plainly fraudulent on both ſides, ſhould be made void. CHAP. 9.

XIV. Men contract with others either in perſon, or by agents, factors, deputies, ambaſſadors, or any one they have by their deed empowered to tranſact validly in their names. Where unlimited general powers are given by the conſtituents, they ſeem obliged to ratify whatever is done by their deputies in the matters committed to their management without reſervation, unleſs the conſtituent can directly prove that their deputies were corrupted by the other party, or the terms agreed to are ſo manifeſtly unreaſonable as to give ſufficient proof of corruption to any wiſe unbyaſſed arbitrator. To avoid the dangers of unlimited powers, publick inſtructions or powers are now given, declaring what matters are committed to theſe deputies and within what bounds; which powers are mutually made known. The conſtituents are bound only by ſuch contracts of their deputies of any kind as are within the limits of their powers.

CHAP. X.

The Obligations *in the* Use *of* Speech.

Natural principles binding to veracity.

WE mentioned in the former chapter ſome natural principles which are plainly deſtined to regulate our ſpeech. As the power of communicating to each other our ſentiments, deſires, and intentions is one of the great bleſſings of the human ſpecies, ſo appoſitely joined with our ſocial feelings and affections; nature has alſo implanted a moral feeling in our hearts to regulate this power. We are naturally prone to communicate our ſentiments. Truth is the natural production of the mind when it gets the capacity of communicating it, diſſimulation and diſguiſe are plainly artificial effects of deſign and reflection, and an immediate approbation naturally attends both this communicativeneſs, and the ſtedfaſt purpoſe of ſpeaking according to our ſentiments. In the exerting theſe powers of ſpeech in the manner our heart at firſt approves, we muſt no doubt have a regard to ſome of the more general controlling principles in our conſtitution, ſo as not to follow any inferior one in oppoſition to the ſuperior, as we muſt controll ſometimes and reſtrain the exerciſe of pity, gratitude, and other lovely principles when they interfere with the publick happineſs: but where candour, openneſs, and a ſincere diſcovery of our ſentiments does not interfere with it, the immediate feelings of our hearts ſuggeſt our duty

and obligation to it, and that prior to the general obligation of uſing this powerful inſtrument of ſo many bleſſings in ſociety in that manner which the general intereſt requires. CHAP. 10.

There are other ways in which we may communicate our ſentiments, deſires, or intentions, as by ſymbols, hieroglyphics, painting, motions ſignificant from nature, or cuſtom. But ſpeech and writing are by far the moſt diſtinct and uſeful ſigns.

II. To underſtand our duty in the uſe of ſigns, we muſt obſerve that grand * diſtinction among them, that ſome of them either by natural ſimilitude and connexion, or by cuſtom, intimate to the obſerver a propoſition, or give him occaſion to infer it, without his imagining that the perſon who uſed theſe ſigns had any intention, or made any profeſſion of communicating by them his ſentiments or deſigns to him. Thus by ſeeing ſmoke, we conclude there is fire; by ſeeing it ariſe in many places of an hoſtile camp in an evening, we conclude that the army is not in motion; by ſeeing light all night in a window, we conclude that ſome perſon is watching; nor do we imagine that by theſe ſigns any perſon profeſſes to communicate to us his ſentiments, or to inform us of any propoſition. But 2. There is another uſe of ſigns, whether natural or cuſtomary, which plainly imports ſuch a profeſſion in the man who uſes them; and 'tis only by doing ſo that they ſuggeſt to us any propoſition. *A neceſſary diſtinction of ſigns.*

* See *Grot.* de J. B. et P. lib. iii. c. 21. § 8. N. ii. et *Puffend.* de J. N. et G. lib. iv. c. 1.

BOOK II.

This diviſion of ſigns is different from that into *natural*, and *cuſtomary* or *inſtituted*. Both natural and cuſtomary ſigns may be ſo uſed as to import a profeſſion of communicating our ſentiments to others. The ſending little wings or ſpurs to a friend at a diſtant court, ſignifies to him that he is in danger; and that only upon this juſtly preſumed profeſſion of ours to intimate to him our opinion about his danger. Deſignedly to deceive one by ſuch ſigns, or by any hieroglyphicks, would be as criminal as by a letter; and yet theſe are natural ſigns. On the other hand, inſtituted ſigns may lead one into a concluſion about our ſentiments without his imagining that our uſing them was a profeſſion of imparting our ſentiments to him. A letter intercepted, or ſpeech over-heard by one to whom it was not addreſſed, may lead him to ſuch concluſions, while he yet knows there was no ſuch intention or profeſſion of communicating any thing to him.

Our duty in theſe which do not profeſs to expreſs our ſentiments.

III. As to ſigns importing no ſuch profeſſion, there is this general obligation in the uſe of them "to do "no detriment to any innocent perſon, or to the pub-"lick, by leading men into any falſe concluſions which "may be pernicious to them." Wherever another has a right, perfect or imperfect, to know our ſentiments, there even concealing them by ſilence, as well as all deception by any ſigns, is criminal. But where others have no ſuch right, and much more where there is a juſt cauſe of war, ſo that even violence is lawful; or wherever deceiving others may do good; we may deceive them by ſuch uſe of ſigns as imports no pro-

ſeſſion of communicating our ſentiments. Such *ſtratagems* are juſtified by all, and may be uſed toward a friend for any innocent purpoſe. A ſtudious man may darken his chamber that others may conclude that he is abroad.

In thoſe which profeſs it there is a tacit convention.

But in that uſe of ſigns which imports a profeſſion of imparting our ſentiments, upon which their ſignification depends, the caſe is different. A great part of the pleaſure of a ſocial life ariſes from mutual confidence in each others veracity in narrations, as well as promiſes. We often take our meaſures in dependence on the narrations of others, and derive from them much of our knowledge in human affairs. Deceiving others therefore deſignedly by ſigns juſtly underſtood as containing this profeſſion of imparting our ſentiments, and interpreted by them in the uſual manner; as our hearts muſt immediately condemn the inſincerity of it, ſo upon reflection we ſee it tends to deprive human life of all theſe advantages from mutual confidence in converſation.

This uſe of ſigns too imports a tacit convention to impart our ſentiments to the perſon we addreſs them to. Were not men perſuaded of ſuch an engagement, it would be vain and fooliſh to addreſs ſpeech ſeriouſly to another, or to liſten to what is ſaid. Suppoſe men imagined there was no obligation to veracity, and acted accordingly; ſpeaking as often againſt their opinion, as according to it; would not all pleaſure of converſation be deſtroyed, and all confidence in narration? Men would only ſpeak in bargaining,

BOOK II. and in this too would ſoon loſe all mutual confidence.

Tho' we are not always obliged to diſcloſe our ſentiments, yet from theſe conſiderations it muſt appear that we are obliged, whenever we uſe ſigns in a way that imports a profeſſion of imparting our ſentiments, to be faithful in this profeſſion; or to "uſe them ſo as "ſhall impart our real ſentiments according to the "reaſonable interpretation of ſuch ſigns." And this is the general law of veracity.

Neceſſary limitations.

IV. There are ſome neceſſary limitations of this rule, or ſome rules of interpretation of ſigns, eſpecially of words, to be obſerved.

Change of ſignification.

1. When the ſignification of words, or other ſigns dependent on inſtitution and cuſtom, is changed from the old original one, we are not guilty of falſhood if their ſignification according to the preſent cuſtom is true. Thus expreſſions of courteſy, and the ordinary deſignations of certain orders and offices, import no ſuch opinions of the relations, or moral qualities of the perſons they are addreſſed or applied to, as the words would import on ſome other occaſions; and ſo no body is deceived by them. They only ſignify our intention of common civilities, or of paying the ordinary deference to theſe ſtations.

Allowance given to deceive.

2. When in certain affairs 'tis known that men do not conceive it an injury to be deceived, there is no crime in falſe ſpeech about ſuch matters. This is the caſe in ſome diverſions. In theſe trifling matters we ſee there is no mutual confidence, and thence may diſcern what would be the effect of falſhood in ſerious

narrations. If in ſome few greater matters men have relinquiſhed their claim to the veracity of others, there is no obligation to it. A tacit remiſſion can free from a tacit convention; or rather in ſuch matters, addreſſing ſpeech to one imports no convention. No man cenſures a phyſician for deceiving a patient too much dejected, by expreſſing good hopes of him, or by denying that he gives him a proper medicine which he is fooliſhly prejudiced againſt: the patient afterwards will not reproach him for it. 'Tis true men cannot be often deceived in ſuch matters; confidence is ſoon loſt in them. But the good end may be obtained, the prejudice may be removed, and the patient does not diſapprove the deceit. Wiſe men allow this liberty to the phyſician in whoſe skill and fidelity they truſt. Or if they do not, there may be a juſt plea from neceſſity; of which preſently. CHAP. 10.

3. Nay if falſe narrations are frequently practiſed on all ſides in war; if the cuſtom be ſo received that none complain of it as an improper artifice: however before the cuſtom was received and known ſuch narrations were unjuſt and treacherous; yet, when it is avowedly received, they can ſcarce be called unjuſt: ſince men ſeem mutually to remit their right. Such artifices indeed cannot be often repeated with ſucceſs, as they are ſoon ſuſpected. *Not cenſured by parties concerned.*

The caſe is quite otherways in all ſerious narrations of men at peace. Nor indeed is the cuſtom univerſally received in war. But as to any deceptions in any form of treaty or convention, even during a ſtate

BOOK II. of hoſtility, they never were or can be allowed as lawful. 'Tis by means of treaties alone that an end can be put to war without the cruel ruin and devaſtation of one party; by treaties alone can any humane methods of war be received: to make them engines of deceit and hoſtility makes them uſeleſs, and all horrid devaſtations muſt enſue: it muſt therefore be highly criminal.

Caſes of injuſt force.

4. Another limitation or exception allowed by moſt authors on this ſubject is, when promiſes or narrations are extorted by the avowedly injuſt violence of men who in their courſe of life renounce all the laws of nature: as 'tis alledged that they have forfeited all theſe rights of mankind, the maintaining of which to them would fortify or encourage them, or give them advantages in their wicked courſes.

Previous intimation made.

5. Another exception is obvious, when one has previouſly intimated to thoſe concerned that he does not on a certain occaſion ſpeak according to his ſentiments, or in the common acceptation of words. Thus when in teaching, men give examples of falſe propoſitions; or when men have declared that they appropriate certain ambiguous words to a ſignification different from what is common; or when friends have previouſly agreed upon meanings peculiar to themſelves in their correſpondence; there is no fault, tho' the words would intimate to others a falſe propoſition.

Caſes of ſingular neceſſity.

6. Another exception much inſiſted on is in caſes of ſingular imminent neceſſity, which 'tis alledged ſu-

perſedes the obligation of many of the ſpecial laws of nature which bind us ſacredly in all ordinary caſes. CHAP. 10.

As this plea from extraordinary caſes of neceſſity is not peculiar to the ſubject of veracity in ſpeech, we defer it to be conſidered more generally * hereafter. And ſubjoin here ſome more ſpecial uſeful rules in which good men muſt agree.

Some ſpecial rules.

IV. The general advantages of ſincerity and of the mutual confidence thence ariſing in ſociety are ſo great, and the effects of inſincerity and falſhood ſo pernicious, that if any exceptions are allowed in caſes of neceſſity, the neceſſity muſt be very great and manifeſt, that it may over-ballance the evils on the other ſide.

Evaſive ſpeech when lawful.

2. Wherever we are under obligation to impart our ſentiments, we are bound to uſe ſuch words as we judge moſt proper and effectual for that purpoſe; and to uſe other words deſignedly which we foreſee will deceive the hearers, tho' in ſome other way of interpretation they may be true, is criminal. But in caſes where we are not obliged to declare our ſentiments, on account of the bad conduct or intentions of ſome hearers, or where our refuſing to anſwer ſome captious queſtions might diſcover, as much as direct ſpeech, what the inquirers have no right to know, and would abuſe to the worſt purpoſes, if they knew it; there it may be lawful to uſe ſuch evaſive anſwers as to a good unprejudiced mind, according to a juſt interpretation, would not intimate any thing falſe, while yet we

* Chap. xvii. of this book.

BOOK II. foreſee that others will interpret the words another way, and be deceived by them, through their own temerity, or injuſt prejudices. Of ſuch ſpeeches and anſwers there are inſtances in ſome of the moſt ſacred characters. *

Sincerity to be inculcated on all.

3. An habit of ſincerity ſo naturally attends and aſſiſts a virtuous diſpoſition, and a contrary one is ſo pernicious, that all diſſimulation and diſguiſes, as well as direct falſhood, ſhould be ſeverely reſtrained in the young; nor ought they before the full uſe of reaſon to be allowed in ſuch arts of concealment as a good man in mature years may ſometimes juſtly uſe.

When declarations honourable even without effect.

4. There are ſome tenets of piety and virtue of ſuch high dignity, and a good mind muſt have ſuch an ardour to own and divulge them, that one is juſtified in openly declaring them at all hazards to himſelf, even when he has no proſpects that others ſhall be brought into the ſame ſentiments by theſe declarations. And wherever there is juſt ground of hope that ſuch declarations ſhall do more good to the publick by enlightening the minds of others, than what over-ballances all our own ſufferings we foreſee, there we are obliged to ſuch declarations and cannot innocently decline them: as when God has promiſed ſucceſs by theſe means to a virtuous cauſe, or an inſtitution moſt beneficial to mankind. And yet, on the other hand, where there is no rational hope of ſucceſs, or of having any good

* *Plato de Repub* l. iii. ſeems to allow deception to be one of thoſe powerful medicines which none but the ſkilful ſtate-phyſician ſhould uſe, and that too only on extraordinary occaſions.

influence on others, one cannot be ſaid to be criminal in omitting ſuch voluntary declarations as can have no other effect than his own ſufferings. CHAP. 10

5. As one moſt important end of civil power is the taking the deciſion of controverſies, and the execution of juſtice, out of the hands of the intereſted and paſſionate parties, and committing it to unbyaſſed men of wiſdom intereſted on neither ſide; and to this all the ſubjects of a ſtate have implicitly conſented: 'tis the duty of a perſon cited as a witneſs in judgment, not only to maintain the ſtricteſt veracity in what he affirms, but to diſcover fully what he knows in the cauſe when required. And 'tis neceſſary in all ſtates that ſevere puniſhments be inflicted on ſuch witneſſes as even conceal any thing required, out of pity, or favour to one whoſe cauſe they think juſt, or who has incurred the penalty of a law they may judge to be too ſevere. Were witneſſes allowed with impunity to falſify, or to deny their knowledge of what they truly know, all civil judicatories would be uſeleſs: the deciſion of cauſes muſt remain in the hands of the imprudent, or ſuch as are intereſted one way or another, as the witneſſes generally are, by favour, or pity at leaſt. If laws, or judges are too ſevere, or unjuſt, one would act the heroick part who rather than contribute to the ſufferings of the innocent would refuſe to give teſtimony, and ſubmit to any penalty of refuſing it, when thus he could obtain ſafety to the perſon in danger. *The ſtrict obligation on witneſſes.*

6. As in addreſſing ſpeech to others who have a right to know our ſentiments, we do not merely pro- *The crime of equivocation and mental reſervations.*

BOOK II. feſs that the words ſhall in ſome poſſible interpretation be true, but that they ſhall impart the truth in the ordinary acceptation in which a wiſe man would take them: ſince one might as well change all the ſignifications of words, and make a new dictionary, according to which he might affirm or deny any thing, as make a new grammar, or way of conſtruction unknown and unexpected by others. Both practices would deſtroy all uſe of ſpeech: ſo, for the ſame reaſon, 'tis plainly unlawful to ſpeak what in the terms expreſſed is falſe, tho' a ſecret reſervation or addition would make the propoſition true. No ſentence is ſo falſe or abſurd that it cannot, in this manner, be made true.

Practical rules of converſation; that it be profitable to others.

V. The former rules are deſigned to keep men from the crime of falſhood: but there are many others pointing out the duties, the virtues, and beauties of converſation, as ſpeech may be the means of great good in human life. An honeſt heart poſſeſſed with kind affections to its fellows will incline to employ his converſation for their ſervice as much as he can: ſuch a one will deſire uſeful knowledge in human affairs as a fund of good offices; his ſerious diſcourſes will be inſtructive, or perſuaſive to ſomething honourable, and even his gayety will either be ſubſervient to the ſame purpoſes, or at leaſt innocent. And for theſe ends a winning courteſy in converſation, and even an agreeable external behaviour, is not unworthy of the regards of the higheſt characters.

Not calumnious, this exceedingly criminal.

2. As all men have a tender ſenſe of honour and reputation, and the utmoſt averſion to infamy, and

the contempt of their fellows; as being eſteemed and beloved by our neighbours is one of the ſweeteſt enjoyments of this life, and ſuffering reproach, and infamy, and contempt, is among the bittereſt afflictions to the fineſt ſpirits; all diſpoſitions of humanity, all our moral notions of juſtice recommend to men the greateſt caution about the characters of others. We may indeed look upon ourſelves as at ſome liberty as to the meaſure in conferring praiſes or honours on men for any eminent virtues or ſervices which happen to be aſcribed to them. And yet even in this matter, a low envious poor ſpirit may be evidenced by denying the juſt praiſe to eminent merit, or by detracting from it, and ſtudiouſly diminiſhing its importance; and ſuch practices diſcourage all generous diſpoſitions. Yet ſtill each one is ſome way judge for himſelf as to the degree of eminent praiſes he will confer; and the right of others in this matter is only of the imperfect kind, tho' in men's judging wrong, and violating ſuch rights, they often diſcover a moſt odious diſpoſition. But as to the ſimple character of integrity, honeſty, and purity of manners, or the reputation of a good honeſt man, every one has a perfect right to it, unleſs he has forfeited it by groſly immoral actions. Unjuſt calumny and detraction therefore muſt be among the moſt grievous injuries; and the more odious that they can often be executed by hints, inſinuations, ſhrugs, whiſpers in the dark. CHAP. 10.

Such as have any regard to virtue, to the goodneſs of their own hearts, or any moral worth, ſhould the

BOOK II. more carefully obſerve the firſt inclinations to ſuch wickedneſs, and conſider how baſe the roots are from which it ſprings. At beſt from want of all examination at home, and a vain humour of talking about and intermedling with other people's affairs; often from pride, and a mean delight in our own imagined ſuperiority in virtue: often from a baſer envy, when others are like to excel ourſelves; and ſometimes from an habitual ſort of malice toward ſuch as ſeem to vye with us in happineſs, in wealth, in knowledge, or in popularity; or who have oppoſed any of our deſigns. Seldom are men led into ſuch practices by any of the lovely diſpoſitions of the heart even of a narrower kind; and all the generous and humane principles muſt make us abhor them.

Secret faults of others not to be divulged.

3. Nay ſuppoſe we are well aſſured of the ſecret faults or vices of others, it ſeldom can do good to divulge them. The reſtraint of ſhame, which is ſo powerful in life, is taken away when a character is loſt. Publick infamy may be too cruel a puniſhment to ſuch as a private admonition might reform, who perhaps are already ſincerely penitent, and repairing all wrongs as far as they can. Suppoſe a private admonition does not reform the offender, yet if the action can continue ſecret, and there be no fear of further injuries, or that others ſhall be ſeduced, 'tis hard to tell what is the advantage of publiſhing ſecret crimes. When there is hope that publick cenſure may reform where private admonition prove ineffectual; where 'tis neceſſary to prevent future crimes, or the ſeduction of o-

thers; or to obtain reparation of damage, then it is prudent and juſt. But where theſe motives do not recommend it; where the ſecrecy can prevent the hurt of the example; where damages are repaired, and no new injuries apprehended; what can the divulging of faults do except gratifying our ill-nature, or pride, or envy, or vanity in our ſuperior purity, or an idle inclination to inconſiderate talking. The vicious are eaſieſt reclaimed while the reſtraint of ſhame remains; which is loſt by publick infamy: the frequency of crimes makes them appear leſs ſhameful to others; their vicious inclinations are leſs reſtrained when they find that many indulge them, and the virtuous become more ſuſpected of hypocriſy. CHAP. 10.

When indeed the groſs vices of men are publick, 'tis the duty of every ſociety to declare their diſlike of them; and yet to retain good-will toward the offenders, and endeavour to reclaim them. But while vice can be concealed, a good friend, or neighbour, has the beſt opportunity of the kindeſt office to the offender, whom he may reclaim by admonition, and oblige in the higheſt manner by concealing his faults.

4. One of the moſt amiable and uſeful offices of life comes in on this ſubject, the reconciling friends, or neighbours, who are at variance, by free converſation with both ſides, repreſenting the matters of offence in the moſt favourable lights, ſuggeſting all extenuations, recalling paſt kindneſſes, and preſenting the great motives we all have to mutual forgiveneſs, *Doing good offices in converſation.*

BOOK II. ſince all of us need ſo often the mercy of God, and the indulgence of good men.

5. Under this head of the uſe of ſpeech comes likewiſe in the old logical and moral debate between the Cynicks and the other ſects of antient philoſophy, about obſcenity. The Cynicks allege that "there is no "work of God, no natural action, which may not be "matter of inquiry and converſation to good men, and "we muſt uſe their names; hence, they conclude there "is no obſcenity." The anſwer to this is obvious.

The nature and crime of obſcenity.

Many words in every language, beſide their primary ſignification of ſome object or action, carry along additional ideas of ſome affections in the ſpeaker; other words of the ſame primary meaning may have the additional ſignification of contrary affections; and a third ſet of words may barely denote the object or action, without intimating any affection of the ſpeaker. We ſhall find this difference in comparing the terms of contempt and indignation one uſes when provoked, with thoſe of the ſame primary meaning uſed by a calm man relating the ſame event. Few objects want theſe three ſorts of names, one barely denoting it, another ſort denoting alſo our joy or approbation, or our reliſh for it, and a third denoting our averſion or contempt of it. *Adultery*, *inceſt*, *fornication*, *lewdneſs*, denote theſe vices, and the diſlike and condemnation of the ſpeaker: other terms for the ſame actions may denote our liking them, and our lewd inclinations: a ſerious mournful account of any battle

or unhappy riot has its grave words importing alſo pity and regret: a burleſque poem has its ludicrous words for the ſame things, importing our indifference and contempt of them. A chirurgeon uſes middle words, importing no paſſion of either kind.

An anatomiſt, or any modeſt man, can find words denoting any parts of the body, or any natural actions, or inclinations, without expreſſing any lewd diſpoſitions, or any reliſh for vicious pleaſures. In ſuch words there is no obſcenity. Other words may import an immoderate keenneſs for ſuch pleaſures, a diſſoluteneſs of mind, a want of the natural modeſty, a neglect of all the ſober reſtrictions on our brutal appetites, and a recommendation of a diſſolute conduct to others. Theſe are the obſcenities of converſation unworthy of a rational being, and oppoſite to the modeſty of our nature, as well as all the manly principles of virtue.

In immoderate ſenſual enjoyments of other ſorts there is vice; and a baſe deſpicable ſoul may be diſcovered by great delicacy and concern about them. Converſation expreſſing ſuch a low taſte, or recommending it, may alſo be ſhamefully vicious. But as the amorous appetite is generally more violent, there is a ſenſe of ſhame peculiarly fitted to reſtrain it; the breaking through this ſtrong reſtraint of modeſty, by our converſation, is generally more infectious and corrupting to others, who have not got a finer taſte to make it wholly nauſeous, than mean converſation about other ſorts of ſenſuality.

CHAP. XI.

Concerning Oaths *and* Vows.

Oaths fall under consideration here, as they are natural confirmations of promises, and testimony or narration.

The nature of Oaths.

I. As nothing can have greater influence on one who believes a righteous providence rewarding the good, and punishing the evil, to engage him to truth in narrations, and faith in contracts, than "a solemn invocation of God as the witness and avenger "of falshood," such confirmations have been required to matters of greater importance in all nations, and are called *oaths*. And when devoutly taken, they are natural acknowledgements of the Divine Perfections and Providence. We do not either make the Deity more attentive, or give him any new right of punishing. But by such invocation we present to our own minds the strongest motives to veracity and fidelity, and exceedingly increase the guilt of falshood or infidelity.

Their strong obligation, and dangerous abuses.

As all the moral feelings of the heart must enjoin upon all rational creatures who know their Creator, the deepest reverence, admiration, gratitude, and love toward him, so 'tis of the highest importance to influence men to every thing great and honourable in social life, and to deter them from the contrary, that such devout affections toward God should universally pre-

vail. And therefore whatever practice tends to abate this awful reverence of the Divine Majesty, must be extremely criminal. Such plainly is the interposing of oaths in trifling or ludicrous subjects; the insisting on them without great necessity even in serious matters which often occur: the requiring them frequently where we could have sufficient security without them, and where there are strong temptations upon men to perjury, with a probable prospect of impunity: or the administring them in a careless manner which neither evidences any devout dispositions in such as enjoin them, nor is apt to raise them in the person who swears, or in the spectators. Such practices must naturally abate the devotion of a nation in all its parts, and particularly as to the sense of obligation in that most sacred bond of an oath. What folly is it in princes to expect that men shall be bound by oaths of allegiance to themselves, when they so little regard the preserving among their people an universal reverence for oaths? Nay when by foolish and unnecessary oaths, every day imposed and irreverently administered, they are debauching the consciences of their subjects, and abating more and more any small remains of religion and integrity among them. CHAP. II.

'Tis a monstrous abuse too to employ oaths where they can give little or no security. Such are those required in declaring our assent to long systems of disputable and sometimes unnecessary opinions in matters of religion and promising to adhere to them. Not to mention the great hazard of debauching the con-

BOOK II. sciences of men by prevarication about their present sentiments; whensoever by further inquiry they see ground to change their sentiments, such oaths are no security; as they were confirmations of promises now become impossible to be fulfilled. Nor indeed can oaths of allegiance have much further effect. Men of no conscience are not bound by them. Men of virtue would be loyal to their lawful prince without them. If a good man after swearing allegiance should find cause to change his opinion as to the right of the prince in possession, he will conclude too that he is not bound by the oath, since it was contrary to the right of another.

Oaths only by the Deity.

II. As 'tis a foolish and profane action to swear by any being who is not believed to be possessed of divine power, forms commonly received, if they have any meaning, are metonymical oaths by God. Swearing by one's life, by his head, or by one dear to him, is invoking the Divine vengeance upon them in case of falshood. Swearing by the sun, the light, or the earth, is imprecating that we may be deprived of all use of them. Other metonymies are more obvious. Using any of these forms in trifling matters is either foolish, if we do not know the meaning of them, or very profane if we do. None of them should be used in common conversation *, nor even without a real intention to incur the obligation of an oath.

Who is deemed to swear.

As in covenants, so in oaths, he is deemed to have

* This is plainly the intention of *Matth.* v. 32. That we should use none of those forms *without intention of obligation.* That this sentence is thus elliptick, appears from the context, and the Jewish casuistry *Matth.* xxiii. 20.

conſented, or ſworn, who uſed the ſigns which commonly denote ſuch actions, and profeſſed to uſe them as conſenting or ſwearing, howſoever his mind was ſecretly employed at ſuch times. And he is puniſhable for perjury if he falſifies in teſtimony, or breaks the promiſe ſo confirmed. Men can judge of our inward actions only by the ſigns.

Oaths a diſtinct act.

The oath is properly a diſtinct act from the profeſſion or promiſe, tho' it may be involved in the ſame grammatical ſentence by ſome elliptick form. The oath is the invocation of God as the witneſs and avenger of falſhood, in ſome promiſe or aſſertion preſuppoſed. It therefore neither increaſes nor alters the matter of obligation, but confirms what was previouſly conſtituted. By it we imprecate vengeance upon our neglect of our duty. A contract therefore which is void becauſe of the fraud of a party, or by any error about the eſſentials of it, or by defect of ſome valid condition, tho' it was confirmed by an oath, is not thereby made obligatory, nor is any juſt exception precluded. Having invoked puniſhment upon our failing in our duty, has no effect when we do nothing contrary to our duty.

How far they can bind.

III. An oath cannot bind us to what is directly impious toward God, or contrary to the perfect right of another; or to what is ſpecially prohibited by a law excluding our moral power of tranſacting in thoſe matters. Could oaths bind us in ſuch caſes, they would be the moſt pernicious engines of evading every obligation to God, or man; and of deſtroying all the rights

BOOK II. of others. The invoking of God as a witneſs and avenger, can never move him to puniſh us for omitting any impiety, or injuſtice: but in the natural matters of commerce committed to human prudence, tho' we have contracted raſhly, and offended in doing ſo againſt ſome general laws, we are obliged, as was ſhown above; and much more when the deed is confirmed by an oath. 'Tis in ſuch matters that a good man *changeth not when he has ſworn to his own hurt.*

In a promiſſary oath there is no obligation without the acceptance of him in whoſe favour it is made, or if after acceptance he voluntarily remits his right, or when any third perſon without whoſe conſent we cannot tranſact in ſuch matters denies his conſent. Where we have deceived others by acting as if we had full moral power in ſuch caſes, we are obliged at leaſt to compenſate the damage.

The ſenſe of the words how to be taken.

When one juſtly demands of us an oath we ſhould either ſwear in the ſenſe he requires us, or not ſwear at all. In oaths required by private perſons we may always know their ſenſe: in thoſe required by law we muſt ſwear in the ſenſe of the legiſlator, or decline them altogether. No deputy magiſtrate, or court, has the power of explaining them. 'Tis exceedingly pernicious to enjoin oaths conceived in ambiguous terms, or ſuch as cannot eaſily be underſtood by all on whom they are enjoined.

Aſſertory, and promiſſary oaths.

IV. Beſide the general diviſion of oaths into *promiſſary* and *aſſertory*, there are ſeveral ſub-diviſions. Aſſertory oaths demanded from witneſſes under a pe-

nalty, are called *neceſſary*. When one of the contend- CHAP. II.
ing parties, with conſent of the judge, leaves the cauſe to the oath of the other, 'tis called a *judicial oath*. When the ſame is done without order of a judge, by mutual conſent, 'tis called a *voluntary oath*. When it is enjoined on the party accuſed in a criminal action, in which he is to be abſolved upon ſwearing to his innocence, 'tis called a *purgatory oath*. When the oath is demanded only that the perſon accuſed may diſcover his crime, or be deemed guilty upon his declining to ſwear, it is called *expletory*, as it compleats an imperfect proof. But where one's life or character is at ſtake, the temptation to perjury is ſo ſtrong with thoſe who are guilty, and it is ſo little neceſſary for any publick good to puniſh a man of ſuch integrity, as will not ſwear falſly to ſave his life or character, for a crime perhaps done in a tranſient paſſion, that the humane laws of ſome ſtates have juſtly excluded all purgatory or expletory oaths in criminal matters; ſince by them the impious are not detected, and only ſuch can ſuffer as have a pretty ſtrong ſenſe of piety. 'Tis certainly better that either direct teſtimony, or concurring circumſtances, ſhould be made the ſole methods of convicting any man.

It were to be wiſhed that in matters of property too we could avoid obliging men to ſwear in their own cauſes. In civil actions the magiſtrate does not require the oaths for the ſake of any publick right of the ſtate, but as the ſole means of deciding juſtly between the parties. And the temptation to perjury in

BOOK II. theſe caſes is not generally ſo great as in criminal actions, and it can be more eaſily detected.

The nature of vows. V. A vow is an oath in which men are not confirming any conveyance of right properly and immediately to their fellows, or any contract with them; but 'tis "a promiſe made to *God*, binding us to ſome "performance, and an invocation of divine puniſh-"ment if we omit it." By vows we convey no right to men in the matters of commerce; we oblige ourſelves only to *God*.

their uſe. When men vow what is truly wiſe, and prudent, and pious and charitable, the omiſſion of ſuch offices becomes more criminal after the vow; and thus by vows men may have deeper impreſſions made of their obligations to what is good and honourable; and may create in themſelves a more firm abhorrence of what is evil, or of any negligence in their duty: and this is the proper uſe of vows, to confirm every good and wiſe reſolution by ſolemn engagements in the preſence of *God*.

How far obligatory. 1. But firſt, what we could not bind ourſelves to by a contract, we cannot be bound to by vows; ſuch as actions impious toward *God*, or contrary to the perfect right of another, or contrary to any ſpecial precept depriving us of the moral power of contracting in ſuch matters.

2. Again, we may be further obliged by contracts, than we can by vows. When we contract imprudently with men in matters of commerce, againſt thoſe general laws which require a wiſe adminiſtration of our

affairs for the benefit of our families and friends, and the other party insists upon the contract; a regard to a distant good, and the necessity of maintaining the faith of commerce, and of excluding vexatious suits, and endless evasions, obliges us to observe what we have engaged. But when one makes an imprudent vow to *God*, we are sure *God* does not accept of it, or insist on our performing it: nor is there any such reasons as those from the necessity of maintaining commerce, to oblige us to it. Thus should the parent of a numerous family, in any danger, vow to give the half of his goods to the poor, or to certain orders called *religious*, or for building or adorning certain edifices; or should he undertake useless penances; while all the indigent are sufficiently provided otherways, or might be so by a far smaller proportion of the goods of the wealthy; while all useful orders of men have sufficient support, and there are sufficient buildings and utensils for all religious uses; and while the penances vowed are no way useful for his improvement in virtue; he is under no obligation, as *God* cannot be supposed to accept of such promises; and there's no conveyance made of any rights to men.

Foolish or impious oaths do not oblige.

'Tis impious to conceive *God*, like the worst of our fellows, catching at all advantages from the fears or weakness of men, and insisting on every rash promise of theirs; or like a tricking agent for a party, to the detriment of the rest of his rational creatures, and to that of these very orders of men, by corrupting them in luxury and lazy opulence: much less can we ima-

BOOK II. gine him fond of ſplendid ſtructures and furniture, to the oppreſſion of his own living temples. All ſuch fooliſh vows made upon any falſe notions of ſanctity in certain orders, or of piety in enriching them to the oppreſſion and enſlaving the reſt, or of ſome promotion of religion by ſuch means as do not conduce to it, are entirely void: and as ſoon as we come to juſter notions, we may conclude we are free from their obligation. What we have ſuperſtitiouſly given under ſuch miſtakes about the true nature of theſe ſubjects, we have a right to redemand; as in other contracts where we have erred in what was eſſential to them. And in theſe cauſes we generally have a juſt exception founded upon the fraud uſed by thoſe who really get the uſe of what is thus given to ſuperſtitious purpoſes.

'Tis ſtill more evident that vows proceeding from wrath, ill-nature, or envy, or any vicious or immoderate paſſion contrary to the ties of humanity, ſuch as thoſe "never to forgive, or be reconciled, or hold any "converſation with ſuch as have offended us," cannot oblige; but muſt be offenſive to *God*, and diſapproved by good men. We ought to repent of our ill-nature and impiety, and not perſiſt in it by obſerving the wicked vow. Vows therefore produce no new matter of obligation, nor make that to be our duty which was not juſt and wiſe, and becoming us, before we vowed; but like oaths, they make a deeper ſenſe of our obligation to what was our duty before. To violate any juſt engagement, or any contract confirmed

by ſuch invocation of *God*, muſt evidence the moſt horrible impiety, and muſt be infamous in the higheſt degree. CHAP. II.

CHAP. XII.

The Values of GOODS *in Commerce and the Nature of* COIN.

I. IN commerce it muſt often happen that one may need ſuch goods of mine as yield a great and laſting uſe in life, and have coſt a long courſe of labour to acquire and cultivate, while yet he has none of thoſe goods I want in exchange, or not ſufficient quantities; or what goods of his I want, may be ſuch as yield but a ſmall uſe, and are procurable by little labour. In ſuch caſes it cannot be expected that I ſhould exchange with him. I muſt ſearch for others who have the goods I want, and ſuch quantities of them as are equivalent in uſe to my goods, and require as much labour to procure them; and the goods on both ſides muſt be brought to ſome eſtimation or value. *Prices muſt be ſettled for all commerce.*

The natural ground of all value or price is ſome ſort of uſe which goods afford in life; this is prerequiſite to all eſtimation. But the prices or values in commerce do not at all follow the real uſe or importance of goods for the ſupport, or natural pleaſure of life. By the wiſdom and goodneſs of Providence there is ſuch plenty of the means of ſupport, and of natural pleaſures, that their prices are much lower than of many other things which to a wiſe man ſeem of little *The natural cauſes of prices.*

BOOK II.

uſe. But when ſome aptitude to human uſe is preſuppoſed, we ſhall find that the prices of goods depend on theſe two jointly, the *demand* on account of ſome uſe or other which many deſire, and the *difficulty* of acquiring, or cultivating for human uſe. When goods are equal in theſe reſpects men are willing to interchange them with each other; nor can any artifice or policy make the values of goods depend on any thing elſe. When there is no *demand*, there is no price, were the *difficulty* of acquiring never ſo great: and were there no *difficulty* or labour requiſite to acquire, the moſt univerſal *demand* will not cauſe a price; as we ſee in freſh water in theſe climates. Where the demand for two ſorts of goods is equal, the prices are as the difficulty. Where the difficulty is equal, the prices are as the demand.

By the uſe cauſing a demand we mean not only a natural ſubſerviency to our ſupport, or to ſome natural pleaſure, but any tendency to give any ſatisfaction, by prevailing cuſtom or fancy, as a matter of ornament or diſtinction in the more eminent ſtations; for this will cauſe a demand as well as natural uſe. In like manner by difficulty of acquiring, we do not only mean great labour or toil, but all other circumſtances which prevent a great plenty of the goods or performances demanded. Thus the price is encreaſed by the rarity or ſcarcity of the materials in nature, or ſuch accidents as prevent plentiful crops of certain fruits of the earth; and the great ingenuity and nice taſte requiſite in the artiſts to finiſh well ſome works

of art, as men of ſuch genius are rare. The value is alſo raiſed, by the dignity of ſtation in which, according to the cuſtom of a country, the men muſt live who provide us with certain goods, or works of art. Fewer can be ſupported in ſuch ſtations than in the meaner; and the dignity and expence of their ſtations muſt be ſupported by the higher prices of their goods or ſervices. Some other * ſingular conſiderations may exceedingly heighten the values of goods to ſome men, which will not affect their eſtimation with others. Theſe above mentioned are the chief which obtain in commerce. CHAP. 12.

II. In ſettling the values of goods for commerce, they muſt be reduced to ſome common meaſure on both ſides. Such as "equal to the value of ſo many "days labour, or to ſuch quantities of grain, or to "ſo many cattle of ſuch a ſpecies, to ſuch a meaſure "or weight of certain fruits of the earth, to ſuch "weights of certain metals." The ſtandard or common meaſure would readily be taken in ſomething of very common uſe for which there would be a general demand: and in fixing upon it different nations would according to their prudence or circumſtances chooſe different materials. *A common meaſure or ſtandard.*

The qualities requiſite to the moſt perfect ſtandard are theſe; it muſt be ſomething generally deſired ſo that men are generally willing to take it in exchange. The very making any goods the ſtandard will of itſelf give them this quality. It muſt be portable; which will *Qualities requiſite to it.*

* *Pretium affectionis.*

BOOK II. often be the caſe if it is rare, ſo that ſmall quantities are of great value. It muſt be diviſible without loſs into ſmall parts, ſo as to be ſuited to the values of all ſorts of goods; and it muſt be durable, not eaſily wearing by uſe, or periſhing in its nature. One or other of theſe prerequiſites in the ſtandard, ſhews the inconvenience of many of our commoneſt goods for that purpoſe. The man who wants a ſmall quantity of my corn will not give me a work-beaſt for it, and his beaſt does not admit diviſion. I want perhaps a pair of ſhoes, but my ox is of far greater value, and the other may not need him. I muſt travel to diſtant lands, my grain cannot be carried along for my ſupport, without unſufferable expence, and my wine would periſh in the carriage. 'Tis plain therefore that when men found any uſe for the rarer metals, ſilver and gold, in ornaments or utenſils, and thus a demand was raiſed for them, they would ſoon alſo ſee that they were the fitteſt ſtandards for commerce, on all the accounts above-mentioned. They are rare, and therefore a ſmall quantity of them eaſily portable is equivalent to large quantities of other goods; they admit any diviſions without loſs; they are neither periſhable, nor eaſily worn away by uſe. They are accordingly made ſtandards in all civilized nations.

Metals by weight. Metals have firſt been uſed as ſtandards by quantity or weight, without coinage. This we ſee in antient hiſtories, and in the * phraſes of old languages. But this way was attended with two inconveniencies;

* *Impendere, expendere nummos*, &c.

one the trouble of making exact diviſions, the other the uncertainty as to the purity of the metal. To prevent both, coinage has been introduced; in which pieces are made of very different well known ſizes in the moſt convenient diviſions: the quantity of pure metal in every piece is known; and finer methods of ſtamping ſecure us that they cannot be clipt or filed away without its being diſcernible at once. The publick faith of the ſtate is interpoſed by theſe ſtamps, both for the quantity and purity, ſo that there is no occaſion for aſſays or weighing, or making diviſions.

The uſe of coinage.

Theſe are the ſole purpoſes of coinage. No ſtamp can add any conſiderable value, as it is eaſy workmanſhip in ſuch valuable materials. But it may be good evidence for the value, when it is impreſſed by any juſt and wiſe authority. Trading nations cannot make the comparative value of their coin with reſpect to other goods, greater or leſs than the value of the metal, and of the eaſy workmanſhip of coinage. Coin is ever valued as a commodity in commerce, as well as other goods; and that in proportion to the rarity of the metal, for the demand is univerſal. A law can only fix or alter the legal denominations of pieces or ounces; and thus indeed affect, within the ſtate, the legal claims formerly conſtituted in thoſe denominations: but commerce will always follow the natural value. If one ſtate had all the mines in the world in its power, then by circulating ſmall quantities, it could make the values of theſe metals and coins high in reſpect of other goods; and by circulating more of

BOOK II. them, it could make their values fall. We ſay indeed commonly, that the rates of labour and goods have riſen ſince theſe metals grew plenty; and that the rates of labour and goods were low when the metals were ſcarce; conceiving the value of the metals as invariable, becauſe the legal names of the pieces, the pounds, ſhillings, or pence, continue to them always the ſame till a law alters them. But a days digging or ploughing was as uneaſy to a man a thouſand years ago as it is now, tho' he could not then get ſo much ſilver for it: and a barrel of wheat, or beef, was then of the ſame uſe to ſupport the human body, as it is now when it is exchanged for four times as much ſilver. Properly, the value of labour, grain, and cattle, are always pretty much the ſame, as they afford the ſame uſes in life, where no new inventions of tillage, or paſturage, cauſe a greater quantity in proportion to the demand. 'Tis the metal chiefly that has undergone the great change of value, ſince theſe metals have been in greater plenty, the value of the coin is altered tho' it keeps the old names.

Value of coin not arbitrary.

IV. The governors of a ſtate which has no monopoly of ſilver and gold, may change the names of their coins, and cheat their ſubjects, or put them into a ſtate of cheating each other in their legal demands: but in commerce coin will retain the natural value of the metal in it, with little variation. Where the legal denominations of value are conſiderably changed, the effects are obvious at once; and in ſmaller changes the effects are proportionable, tho' not ſo ſenſible.

CHAP. 12.

If the legal names of our crown pieces were doubled ſo that the ounce of ſilver were called ten ſhillings, the nominal prices of all goods would riſe as much. We ſhould not get the barrel of wheat for the new ten ſhillings, as we do now in cheap years: we muſt give the two ounces of ſilver as we do now, tho' they would be called twenty ſhillings. Suppoſe people ſo ſtupid that they were contented with the ſame names, but half the ſilver. Coining with any ſtamp is an eaſy manufacture, any nation could make our crown-pieces, and get for them double the quantity of our goods they got formerly. Our own merchant therefore gets for an ounce of ſilver from the farmer or manufacturer what formerly coſt two ounces, and yet at foreign mercats he will get as many ounces for theſe goods as before. Now he doubles his firſt coſt, beſide his former profit. This vaſt gain would invite ſo many, and make ſuch a demand, that the prices of all our goods would gradually riſe, till they came to the ſame quantities of gold and ſilver they were at before, but with double nominal values; and then the new exorbitant gain would ſtop. At firſt our country would loſe one half upon all goods bought from us by foreigners: this loſs would fall upon men of eſtates and manufacturers at laſt.

It follows the quantity of metal.

As to foreign goods 'tis obvious the nominal prices of them muſt riſe at once upon changing the names of our coin. Foreigners who do not regard our laws, or legal names of coin, muſt have for their goods the ſame pieces or ounces they got formerly. Our mer-

BOOK II. chants therefore in selling these goods must have as many pieces or ounces, which now bear a double name.

Again, upon lowering the legal names of coin, the nominal prices of all goods must fall. The merchant cannot afford more pieces or ounces of metal, than he gave before for any goods to our farmer or manufacturer, as he will get no more at any foreign market, and this number now bears a smaller name. Foreign goods are bought abroad for the same ounces they were, and therefore the merchant can afford them here for the same ounces he formerly sold them at, and with the same profit, tho' the name be less. If one merchant refuses to sell so, another will, as all can afford it: or if all refuse, foreigners will send their goods into our country to be sold for the same ounces, now bearing a lower name.

'Tis a fundamental maxim about coin, that "its "value in commerce cannot be varied by names," that prices of goods keep their proportion to the quantities of metal, and not to the legal names. No man values a piece more that 'tis called twenty livres, or twenty Scots pounds, than he would have done on account of the Sterling name.

The effects of legal changes.

V. The changing considerably the legal names of coin must cause innumerable wrongs among the subjects of any state, since the real values of goods continue the same. The lowering of coins wrongs all who are indebted in legal denominations; they must pay more ounces of gold and silver than they received,

or engaged for; and yet get no more ounces by any ſales of their goods than they got formerly. All duties, taxes, rents, ſalaries payable in legal denominations are increaſed. More ounces are received by the creditors in ſuch claims, and yet each ounce will purchaſe as much goods for the ſupport or pleaſure of life as before the change. The debtors therefore are ſo much wronged, and ſo much the creditors are unjuſtly enriched.

Raiſing the legal names has the like unjuſt effects on the other ſide. Debts, taxes, rents, ſalaries, ſpecified in legal names, can then be diſcharged with fewer pieces or ounces; and yet the debtor gets as many ounces for any goods he ſells as before; and the creditor can get no more of the goods neceſſary for life for an ounce than he got before. He is therefore ſo much wronged by the change made in the legal names.

The putting diſproportioned values upon the ſeveral ſpecies of current coin muſt have bad effects on a country. The ſpecies under-valued at home will be carried abroad, and the ſpecies over-valued will be imported; as the former anſwers better at foreign markets, where the ounces of metal are regarded, and not the names, and the later anſwers beſt at home. Whatever ſums are thus exchanged by foreigners, all their gain is ſo much loſs to our country. What we export ourſelves, hurts our country only by introducing perhaps a leſs convenient ſpecies. This diſproportion often ariſes after the values were wiſely fixed

BOOK II. at the time they were made, if either the mines of one metal are more copious in proportion than thoſe of the other; or there be a greater drain of one ſort of metal by exportation, or by ſome conſumption of it in the ſplendour of life.

How it changes by the abundance or ſcarcity of metals.

An increaſe of both metals by copious mines, naturally abates the value of both, without any change of the names. And thus, properly ſpeaking, the values of gold and ſilver are fallen within theſe two centuries above one half: tho' we more commonly ſay that the rates of goods are increaſed. Were the mines quite drained and the quantities of theſe metals much diminiſhed by the various uſes of them in plate, dreſs, and furniture, their value would riſe again; or, we would vulgarly ſay, the rates of goods would fall. The ſtandard itſelf is varying inſenſibly: and therefore if we would ſettle fixed ſalaries, which in all events would anſwer the ſame purpoſes of life, or ſupport thoſe entituled to them in the ſame condition with reſpect to others, they ſhould neither be fixed in the legal names of coin, nor in a certain number of ounces of gold or ſilver. A decree of ſtate may change the legal names; and the value of the ounces may alter by the increaſe or decreaſe of the quantities of theſe metals. Nor ſhould ſuch ſalaries be fixed in any quantities of more ingenious manufactures, for nice contrivances to facilitate labour, may lower the value of ſuch goods. The moſt invariable ſalary would be ſo many days labour of men, or a fixed quantity of goods produced by the plain inartificial la-

bours, ſuch goods as anſwer the ordinary purpoſes of life. Quantities of grain come neareſt to ſuch a ſtandard. CHAP. 12.

On what the prices of goods depend.

In matters of commerce to fix the price we ſhould not only compute the firſt coſt, freights, duties, and all expences made, along with the intereſt of money employed in trade, but the labours too, the care, attention, accounts, and correſpondence about them; and in ſome caſes take in alſo the condition of the perſon ſo employed, according to the cuſtom of our country. The expence of his ſtation of life muſt be defrayed by the price of ſuch labours; and they deſerve compenſation as much as any other. This additional price of their labours is the juſt foundation of the ordinary profit of merchants, on which account they juſtly demand an higher price in ſelling, than what anſwers all that was expended upon the goods. Their value *here* is augmented by thoſe labours, as juſtly as by thoſe of farmers or artiſans.

Contingent profits in commerce.

As there are many contingent loſſes by the periſhing of ſome goods, or their receiving damage, theſe loſſes may be juſtly compenſated by a further augmentation of the price of ſuch as are ſafe. As merchants loſe ſometimes by the falling of the rates of goods on hand, they may juſtly take the contingent advantage too of goods on hand, when the rates of ſuch goods riſe by any accident which makes them ſcarce. Men who are fortunate in theſe accidents may be much enriched, without any fraud, or extortion. The conſtant profit is the juſt reward of their la-

BOOK II. bours. Thus tho' the values of what is given and received in buying and ſelling ſhould ſtill be kept equal on both ſides, as we ſhall ſee preſently, yet there is a natural gain in trade, viz. that additional price which the labour and attendance of the trader adds to the goods; and a contingent one, by the riſing of prices.

CHAP. XIII.

The Principal CONTRACTS *in a* SOCIAL LIFE.

Contracts beneficent or onerous.

CONTRACTS are either *beneficent*, where a gratuitous favour is profeſſedly done on one ſide; or *onerous*, where men profeſs to give mutually equal values. Of the former there are three ſorts known to the *Civilians*, the *mandatum*, *commodatum* and *depoſitum*; of which in order.*

The mandatum.

The *mandatum* is when "one contracts to manage "the buſineſs of another without reward." This may be either with ſpecial inſtructions, or without them. In the former caſe, if the perſon employed departs from his inſtructions, he naturally ſeems liable to all damages occaſioned by it, except he has done ſo upon ſuch very ſpecious reaſons as might miſlead a wiſe man zealous to do the beſt for his friend. In the other caſe, he is bound to ſuch diligence and care as a wiſe man uſes in like affairs of his own, and is only liable to compenſate ſuch damages as enſue upon a defect of this diligence. This is all that the obliging friend can be

* There are other gratuitous contracts not included under any of theſe three, but they come under much the ſame rules, ſuch as loan for conſumption without intereſt.

CHAP. 13.

presumed to have bound himself to, unless he has expressly undertaken for the very utmost diligence and care, or the singular nature of the business plainly required it; and then indeed he is answerable for every oversight, or neglect, which would not have been incident to the very best of men. We are not to lay severer burdens on the beneficent party than they consented to, or to make kind offices perilous to the undertaker, without the highest and clearest reasons. Nor yet should men on the other hand undertake the business of their friends without hearty purposes of executing them carefully; since by doing so they may have prevented their employing some better hands. The * person employed, is bound to account to the * employer when the business is finished: and to † restore his goods with their profits. And the employer is ‡ bound to indemnify his friend as to all losses or expences sustained in his service. The favour undertaken was to employ his labour and care gratuitously, and no more, from the ordinary nature of this contract.

II. *Commodatum* is "the loan for use without any price or hire, where the same individual goods are to be returned." If a price or hire is given, the contract is not beneficent, it goes by another name, *location*, or setting to hire. ⸸ When the same individual

The loan for use.

* The *mandatarius* and * *mandator*.

† This is demanded in the *actio directa mandati*.

‡ This is demanded in the *actio contraria*.

⸸ *Mutuum versatur in rebus fungibilibus, quae reddendae sunt in genere, non in specie.* By *genus* they mean what modern logicians call *species*, equal quantities, weights, measures of goods of the same kind: by *species*, the *Civilians* mean the same individual. *Instit.* l. iii. tit. 15. In this sense the classic authors too use these words.

BOOK II. is not to be returned, but equal quantities or measures, and this without price or intereſt, the contract is much of the ſame moral nature, but the *Civilians* call it *mutuum gratuitum*, or the gratuitous loan for conſumption. If this loan for conſumption be for a certain price beſide the reſtitution of equal quantities, 'tis called lending for intereſt.

Rules in this contract.

In the gratuitous loan for uſe, the favour is done to the borrower. He is therefore certainly bound 1. to as high care of the goods as any wiſe man would uſe about ſuch goods of his own, or rather to greater, out of gratitude. A good heart muſt recoil at ſuffering any friend to loſe by his kindneſs. The lender expects this care, and we are juſtly deemed to have bound ourſelves to it. 2. The borrower is bound to apply the goods to no other purpoſes than thoſe for which they were lent: other conduct is perfidious and ungrateful. And, 3. He muſt reſtore them at the time agreed, in as good order as he received them, excepting the natural wear of ſuch goods, by the prudent uſe allowed. In demanding nothing for the impairing of the goods by this uſe, conſiſts the favour of the contract. 4. If the proprietor needs his own goods before the term of loan is expired, humanity and gratitude oblige the borrower to reſtore them, unleſs he is in ſome extraordinary ſtrait himſelf, much beyond that of the lender. But this cannot be matter of compulſion, except in very ſingular caſes of neceſſity. When the urgent occaſions of the borrower hinder him to reſtore before his time of loan expires

as he is bound in gratitude, he muſt think himſelf obliged, to compenſate any damage the lender ſuſtains by his kindneſs to him. An honeſt heart cannot avoid this duty, tho' he cannot be compelled to reſtore the goods ſooner. Could he be compelled, he might ſometimes be greatly diſappointed; ſince perhaps truſting to this loan, he has omitted providing himſelf otherways when he could have done it, whereas now the opportunity may be gone.

The caſe when the goods lent periſh by accident.

If goods lent, periſh by ſuch an accident as had reached them in the poſſeſſion of the lender, the borrower is not obliged to compenſate them; the lender ſuffers no more by the loan than he would have ſuffered without it. Suppoſe they would have eſcaped in the lender's poſſeſſion, and yet the borrower was guilty of no negligence about them: here a loſs muſt be ſuſtained by one ſide, or by both: neither is ſuppoſed to be in any fault. If no other reaſon of humanity be on the other ſide, the borrower ſeems rather obliged to bear it, out of gratitude; nor is it ſo readily to be preſumed that the lender, who had no views of gain, conſented to bear ſuch loſſes, as that the borrower did ſo; ſince for the advantage of the gratuitous loan, men would readily make themſelves liable to ſuch improbable hazards. The truth may be that neither thought of ſuch contingencies; if they did, they would have expreſly agreed on whom the loſs ſhould fall. And probably it had been on the borrower. There ſeems little occaſion for a general rule to caſt all ſuch loſſes always on one of the parties. If the lender were

BOOK II. rich, and the borrower poor, it would be mean in the lender to demand any compenſation. If the borrower were rich, it would be baſe in him not to compenſate. If their fortunes were equal, or ſo good that neither would be diſtreſſed by the loſs, it would beſt become the borrower to bear it altogether, as he received a favour in the contract. The lovely and honourable part is eaſily ſeen; tho' it is not always eaſy to find reaſons for rules caſting the whole damages in this and ſuch like caſes, univerſally on one ſide.

The lender is bound to refund to the borrower, all expences made in neceſſary repairs by which the goods are preſerved fit for the proprietors uſe; and no others, unleſs by expreſs agreement.

The depoſitum.

III. The *depoſitum* is a branch of the *mandatum*, where "the buſineſs committed and undertaken is the "ſafe cuſtody of goods." The * keeper, as he profeſſes friendſhip, binds himſelf to ſuch diligence as wiſe men uſe about like goods of their own; and muſt reſtore the goods upon the demand of the proprietor, † except only in ſuch caſes where one would have a right to oppoſe him by violence in an unjuſt deſign. Thus one may detain arms depoſited, when demanded with a view to murder any innocent perſon, or to make war on our country. The depoſiter is bound to refund all prudent expences made in keeping his goods.

Onerous contracts.

IV. In onerous contracts, both ſides profeſs to give or transfer goods or rights of equal values. Moſt of

* *Depoſitarius.* † *Cicero* gives a deciſion too general and inaccurate, De Offic. l. i. c. 10.

the neceſſary rules appear ſufficiently from what was ſaid * above about contracts in general. The chief ſorts are, CHAP. 13.

1. *Barter*, or the exchanging goods of equal values; which differs from mutual donation in this, that in donations there is no obligation to equality. *Barter.*

2. Buying and ſelling; the ſimpleſt manner of which is when the buyer at once pays the price, and receives the goods. If the price be paid, or ſecurity for it accepted, and the goods delivered, as the property is compleatly transferred, no ſubſequent ſale, or imperfect prior contract about ſelling, can elude the buyer's right. If the goods are to be delivered on a future day, but the bargain compleated about them; if they periſh before the day, the loſs falls on the ſeller. If they periſh after that day, and the ſeller was ready to deliver them upon it, he is deemed after that day only as the depoſitary. All loſs, without the ſeller's fault, muſt be borne by the buyer. Where an agreement is made about certain quantities of goods which cannot be now delivered, ſuch as about a future crop; and the ſeller afterwards contracts with a third perſon not apprized of the prior contract, and delivers the goods upon receipt of the price; the civil law favours the latter, as a fair purchaſer, and deems all ſales imperfect without delivery; but gives to the perſon deceived in the former contract a full right againſt the fraudulent ſeller, to the whole value of the bargain. If both have paid the price, and the ſeller *Buying and ſelling.*

* See chap. 6. of this book.

BOOK II. proves insolvent, it is not easy to find valid reasons for casting the whole loss on either. There are many * additional covenants in the bargains of sale which are sufficiently understood by the terms of the agreement.

Setting to hire. V. *Setting* and *hiring* includes all these contracts wherein "one agrees for a certain price to do any "work, or to grant the use of any goods, moveable "or immoveable" In these contracts men are obliged to use the goods they hire, as wise men use like goods of their own; and are truly liable in conscience for all damage done by using them otherways; as it is as injurious as any other sort of wrong. A man of true integrity and humanity would particularly regard the case of such indigent persons as often set houses, furniture, and other goods to hire; and be religiously cautious of doing any unnecessary damage to them.

When materials are given out to be manufactured or wrought by an artist at a certain price, the *Romans* have another † expression for the contract, but it is of the same nature with that of hiring labour. The setter of goods must make them fit for use, and keep them so, or refund any charges the hirer has been put to in doing it. And the hired labourer, as he is bound faithfully to execute his work, so he is not to be de-

* Such as the *lex commissoria*, that is, if the price is not paid on a certain day, that the bargain is void. *Addictio in diem*, where the seller may accept of a better price offered before such a day. *Clausula retractus*, or a right of redemption. *Jus protimiseos* the right of redemption or the first offer, if the buyer inclines to sell again.

† *Locare opus faciendum*; where the *locator* pays the price. The *locator operae* receives the price.

frauded of his hire. If he is hired for a long tract of time, the hirer cannot in humanity make any deductions on account of ſmaller interruptions given to his ſervice by tranſient fits of ſickneſs. Such fits are incident to the firmeſt conſtitutions; and the hirer is juſtly preſumed to have precluded himſelf from ſuch exceptions, or deductions from the price agreed to, by hiring for a tract of time. CHAP. 13.

VI. In loan for conſumption at a ſet price or intereſt, the lender claims not the ſame individual, but equal quantities, and the price for the loan. Some goods bear natural fruits or increaſe, as lands, flocks, herds, gardens. The grant of theſe fruits naturally deſerves a price or rent. Tho' goods have no fruits or increaſe, yet if they yield great convenience in life, and have coſt ſuch labour or expence as would have acquired goods naturally fruitful, if the proprietor grants the uſe of them, he may juſtly demand a price, ſuch as he would have had if he had employed his money or labour on goods naturally fruitful. This is the caſe in ſetting of houſes. *Loan for conſumption.*

If in any way of trade men can make far greater gains by help of a large ſtock of money, than they could have made without it, 'tis but juſt that he who ſupplies them with the money, the neceſſary means of this gain, ſhould have for the uſe of it ſome ſhare of the profit, equal at leaſt to the profit he could have made by purchaſing things naturally fruitful or yielding a rent. This ſhews the juſt foundation of intereſt upon money lent, tho' it be not naturally *The juſt foundation of intereſt on loans.*

BOOK II. fruitful. Houſes yield no fruits or increaſe, nor will ſome arable grounds yield any without great labour. Labour employed in managing money in trade, or manufactures, will make it as fruitful as any thing. Were intereſt prohibited, none would lend, except in charity; and many induſtrious hands, who are not objects of charity, would be excluded from large gains in a way very advantageous to the publick.

The meaſure of juſt intereſt.

VII. The reaſonable intereſt varies according to the ſtate of trade, and the quantity of coin. In a country newly ſettled, or but beginning to trade, where few hands and little money are employed that way, great profits are made by ſmall ſums: and as in ſuch places more land-rents are purchaſed for any given ſum than in countries flouriſhing in trade, and abounding with money; an higher intereſt is reaſonable, and no man would lend except upon an high intereſt. The gain too made by any ſum is ſo large, that traders or purchaſers can afford to give it. When many hands and much wealth are employed in trade, as men can be ſupported by ſmaller gains in proportion upon their large ſtocks, the profit made upon any given ſum employed is ſmaller, and the intereſt the trader can afford muſt be leſs. As money grows plentier, and bears leſs intereſt in loans, more incline to purchaſſes of lands than formerly; and this demand raiſes the rates of lands, ſo that ſmaller land-rents can be obtained for any ſum. Men are therefore contented with ſmaller intereſt than formerly when they could have got greater land-rents. They ſhould

be ſatisfied if it ſurpaſſes the annual profits of pur- CHAP. 13.
chaſes, as much as compenſates the greater troubles
or hazards attending the loans: and thus it falls of
courſe, without the force of laws.

Laws too muſt follow theſe natural cauſes in ſettling *The uſe of laws about it.*
the intereſt, otherways they will ſeldom have their ef-
fect, and be iniquitous. If the legal intereſt is high
in wealthy nations, where ſmall gains are made upon
any given ſum employed in trade, traders will not
borrow without abatement of intereſt, nor will men
borrow for purchaſing lands, when the annual rents
of them are far below the intereſt. Moneyed men may
firſt run upon purchaſes, and decline to lend upon
ſmaller than the legal intereſt; but the demand for
lands will ſoon raiſe their price, ſo that they ſhall get
much ſmaller annual rents for a given ſum: many will
therefore accept of intereſt below the legal, but high-
er than the annual rents of lands. If the legal inte-
reſt is made too low, few will incline to lend; they
will firſt attempt to purchaſe lands: if the price of
them riſe by the great demand, ſo that ſmall annual
profit is made this way, moneyed men will turn to
trade and manufactures. Men not educated to ſuch
buſineſs, or who chooſe to live without buſineſs, will
find active traders always fond of borrowing at high-
er than the legal intereſt, and will find ways by diſ-
count, and annual gifts agreed upon, to elude the
law.

The chief uſe of ſuch laws is to ſettle the intereſt
decreed by courts on many occaſions, where there has

BOOK II. been no agreement of the parties; and to prevent the extortions of ſome graſping wretches upon the incautious, or the diſtreſſed. Prudent men will ſettle this point for themſelves according to the natural cauſes.

If the polity of any ſtate allows little commerce with foreigners, admits of no great increaſe of wealth in the hands of a few, nor of any alienation of lands to perpetuity; if it is deſign'd for a *republick of farmers*, which ſome great authors judge moſt adapted for virtue and happineſs,* there all intereſt of money might properly be prohibited. But where the ſtrength of a ſtate depends on trade, ſuch a law would be ruinous.

Partnerſhip. VIII. In the contracts of partnerſhip, which are of very different ſorts, the terms of agreement determine the rights and obligations of the partners. But as they profeſs mutual friendſhip to each other in this contract, there is more room for all reaſons of equity and humanity in this than other onerous contracts; and all frauds deſerve a ſeverer puniſhment.

Contracts of hazard-lotteries. IX. In ſome contracts a certain price is paid for an uncertain proſpect of gain, as in the purchaſe of annuities for life, or of tickets in lotteries. If the ſum of the prizes is no further exceeded by the ſum of the prices paid for all the tickets, than what defrays the neceſſary charge of ſuch projects, and makes a reaſonable compenſation for the attendance and labour of

* This Harrington and others judge to be the polity of the Hebrews; and hence intereſt was prohibited among them, but it might be exacted from foreigners. Deut. xxiii. 19. Pſalm. xv. 5.

the projectors; the contract is not cenſurable upon the account of any inequality; but ſuch projects are often blameable on another account. Private lotteries, wagering, and contracts of gaming, produce no good to the publick, nor avert any evils. Some citizens are enriched by the loſs of others, in a way wholly uſeleſs to the publick. Through the vain hopes of multitudes, and a ſort of ſelf-flattery in their good fortune, were there no reſtraint put to ſuch practices by law, great ſums of money which otherways would have done good to the publick in trade or manufactures advancing the wealth of a nation, would by baſe artifices be drawn into ſuch uſeleſs channels, and men's minds be diverted from all uſeful induſtry. 'Tis therefore juſt to reſtrain ſuch private projects or contracts, even where there is nothing directly fraudulent in them. Upon ſome publick exigence no doubt money may be prudently raiſed by this way of lottery, which can cauſe no complaint, ſince none are forced to contribute. CHAP. 13.

Inſurances.

There are other contracts of hazard where a ſmall price is paid to obtain ſecurity againſt a great uncertain danger; or to have ſuch loſſes made up when they happen. Such are the inſurances againſt the dangers at ſea, or thoſe from fire. Such contrivances are both humane and uſeful to the publick. The inſurers are enabled to indemnify the ſufferers by the premiums received from thoſe whoſe houſes and ſhips are ſafe. Thus a ſort of partnerſhip in loſſes is eſtabliſhed over a nation; as the loſſes are made up by

BOOK II. small contributions from thoſe who have eſcaped the calamity. Thus many active hands in buſineſs are preſerved from early ruin by ſuch accidents.

Wagering and gaming.

In the private contracts of hazard, or partly of hazard, partly of art, ſuch as wagering upon uncertain events, or upon the ſucceſs of a game; if the ſums ventured do not exceed what the perſons can afford to ſpend upon any amuſement, without obſtructing any duty of life; if no more time is ſpent in games than what is a neceſſary refreſhment from ſerious buſineſs or ſtudy; and no habit of ſloth or impatient hankering after ſuch diverſions is contracted; the contracts cannot be called criminal or faulty. But when the ſums hazarded are ſo great that the loſs of them would any way diſtreſs us, or our antagoniſt, and as no good can ariſe from ſuch contracts, they are highly criminal. 'Tis moſt inhumane, as well as fooliſh, to expoſe the fortune which ſhould ſupport a family, our friends, or the poor, or even aſſiſt our country, to ſuch unneceſſary hazard. It is wicked to ly in wait for the ruining our neighbour through his own raſhneſs or imprudence. No man of true virtue or conſcience could retain ſuch gains when he got them. And it is amazing how, in ages of luxury and corruption, men can ſo far forget the true natures and names of things, as not to look upon all ſuch gains as ſcandalouſly infamous to men of better condition, when they are plainly acquired by the ſame mean ſpirit of injuſtice, or avarice, that we all abhor in a thief or a pick-pocket. 'Tis wiſe therefore in

every nation to reſtrain ſuch practices by the ſevereſt laws, and moſt infamous puniſhments; eſpecially in thoſe orders of men who ought to be moſt above ſuch baſeneſs of ſoul, and whoſe vicious examples muſt be moſt extenſively pernicious. But *quid leges ſine moribus vanae proficiunt.*—— CHAP. 14.

X. The common ſecurities given for performance of contracts, are pledges and mortgages (of which already;) and bail, when other perſons become bound in caſe the principal debtor fails. As the loans are often made more upon the faith of the ſurety than the principal, when the principal neglects to pay, or becomes inſolvent, the ſurety is as much bound in honour and conſcience, as the principal was; and can no more uſe any delays, evaſions, or artifices, with a good conſcience, than if the money had been lent for his own uſe; except he diſcovers ſome groſs negligence in the lender, or ſome fraudulent colluſion with the principal, by which this burden is unjuſtly, or maliciouſly caſt upon him. *Contracts of bail or ſurety.*

CHAP. XIV.

Perſonal rights ariſing from ſome lawful action of the perſon obliged, or of him who has the right.

I. SOME rights ariſe, not from any contract, but from ſome other action either of him who has the right, or of the perſon obliged. Theſe actions founding rights are either lawful, or unlaw- *Rights ariſing from actions lawful or unlawful.*

BOOK II. ful. When the actions are lawful, the *Civilians* to avoid multiplying the ſources of obligation, or forms of action, call them * *obligationes quaſi ex contractu ortae:* feigning a contract obliging men in theſe caſes to whatever could reaſonably have been demanded by the one party, and wiſely promiſed by the other, had they been contracting about theſe matters. The obligations indeed appear ſufficiently, without recurring to the notion of a contract, from the nature of the actions, and the rights of property, and their effects. When the action is unlawful, theſe are the rights ariſing from injury, of which in the following chapter.

The former obligations *quaſi ex contractu* are reducible to two claſſes. 1. Theſe ariſing from taking poſſeſſion of goods which one knows belong to others, or are ſubjected to the juſt claims of others. 2. Thoſe ariſing where one derives to himſelf any valuable advantage at the expence or loſs of others, who did not conſent or contract to bear this loſs gratuitouſly. Theſe obligations ariſe either from the nature of property, or mens prior claims; or from the general ſocial law, that none ſhould ſuffer by any good offices done to others not intended as a gratuity, or be damaged in his property without his conſent.

The obligation by poſſeſſing the goods of others.

II. Of the firſt claſs is the obligation upon the poſſeſſor of other mens goods to reſtore them with

* Inſtit. l. iii. tit. 28.

their profits: the obligation upon the * heir to pay the debts affecting the inheritance, and upon the executor to pay debts and legacies as far as the effects go. The eſtate deſcends ſubject to ſuch claims, and the heir has a right only to what remains after diſcharging them: the effects of the deceaſed are the ſole fund out of which ſuch debts ſhould be paid. Nor is there more left to the executor than the ſurplus after debts and legacies are diſcharged. The legatees have as juſt a right to their legacies as the executor or heir by will has to the ſurplus. CHAP. 14.

To this claſs too are reduced the obligations of all who have poſſeſſion of the goods of others without contract, ſuch as tutors and curators, or thoſe who preſerve and take care of the goods of the abſent without commiſſion; who are called *negotii utilis geſtores*. All theſe are plainly obliged to reſtore, and account with the proprietors for their goods and the profits of them.

III. The ſecond claſs contains the obligations on thoſe for whom any important ſervice is done, or to whom any advantage is derived, by the labours or expence of others, without a commiſſion or contract. The perſon thus profited is plainly obliged to refund all prudent expences, and compenſate all labours not intended gratuitouſly. The merchant whoſe ſhipwrecked goods are preſerved by my labour or ex-

The claim of the negotii utilis geſtor.

* The obligation on the heir to pay debts is plainly of the ſame nature with that of the executor or heir to pay legacies, tho' the *Civilians* called the later only an obligation *quaſi ex contractu*. They feigned the heir, as to the debts, the ſame perſon with the deceaſed, and thus made him liable.

BOOK II. pence, without my intention of doing ſuch ſervices, or bearing ſuch charges as a favour, is obliged, when he claims his own goods, to compenſate if required all my prudent labours and expences. Thus one is obliged to indemnify his tutors and curators in all their prudent management of his affairs; and for theſe claims there were particular * actions in the *civil law.*

The claim for maintenance.

As to the obligations upon children for their maintenance, we may conclude, 1. What a parent expends upon his children when they have no fortunes of their own left them by ſome other friend, is univerſally preſumed to be a donation, where the contrary is not declared. But tho' the parent be ſtrictly obliged, from the ſtrong tie of nature declaring to him his duty, to provide neceſſaries for his children, and even is bound by the ſtrongeſt tie of humanity to improve their condition as he has fair opportunities; yet his not placing ſuch offices to an account of debt to be compenſated or diſcharged by the children, is to be reputed an obliging act of kindneſs, which he could not be compelled to by any perfect claim of the children. A parent may juſtly claim to have the expence refunded, if he falls into any diſtreſs. Nay without being in diſtreſs he may juſtly place to an account of debt all manner of neceſſary or prudent expences made upon a child who had a ſufficient fortune of its own; and may get them refunded, either for his own more eaſy ſubſiſtence, or for the benefit of others of his children. But

* *Actio contraria tutelae, et negotiorum geſtorum.*

2. When one maintains the child of a ſtranger, whatever prudent expences are made may juſtly be charged as a debt, where the contrary is not declared. Here there is no preſumption from parental affection that they were intended gratuitouſly. CHAP. 14.

The partiality of many laws.

The partiality which appears in the laws of ſome nations that pretend to pay great regard to the natural rights and liberties of mankind, is very ſurpriſing. Whatever expences are made by any one on the child of the meaneſt citizen, or Fellow-Chriſtian, muſt be a donation, whether ſo intended or not. It founds no right to the child's ſervice, nor to claim any compenſation. He may leave his ſupporter when he comes to the uſe of reaſon. And yet the equally innocent children of captives in war, or of men of a different complexion, are detained as ſlaves for ever, with all their poſterity, upon no other pretence of right than this claim upon them for their maintenance; as if ſuch were not of our ſpecies, and had not bodies and ſouls of the ſame feelings with our own; or as if mens ſecular rights were founded on their religion, or on their complexions.

The ſole juſt claim upon the children of ſlaves.

'Tis true indeed the maſters of the parent, or he who maintains another's child at his own expence, has a right to claim compenſation for all neceſſary and beneficial expences made on the child, and theſe only; not ſuch as were for the ſplendour of his own family. But this right is no higher than that of any creditor in an equal ſum over his debtor. If any friend of the child offers to come to account, and refund

BOOK II. the paſt expences, the maſter cannot juſtly refuſe it, or detain him. If the child when he attains to the uſe of reaſon finds another he rather chooſes to be indebted to, who will repay his former maſter's expences, the maſter cannot juſtly detain him. The labours of the child, after the time that he could earn any thing beyond the plaineſt food and cloathing, ſhould be placed to account as diſcharging ſo much of his debt as their value furpaſſed that of his neceſſary maintenance. And when the ſum of their value, after deducting the charge of the annual neceſſary maintenance, equals the expence of his maintenance in his childhood, the maſter has no further claim upon him. It would generally be found that the labours of any perſon found in body and mind, would ſufficiently diſcharge this debt before he came to thirty years of age: and where there was any conſiderable dexterity, they would diſcharge it much ſooner. The debtor has plainly a right to chooſe that labour by which he can ſooneſt diſcharge the debt.

If greater expences are made on a child for its inſtruction in any art; the child is no doubt liable for any ſuch higher expences as were made for its real benefit. But then, its labours in this art are ſo much more valuable that this greater debt would be ſooner diſcharged: otherways the expences were not for its benefit.

The plea in this caſe from hazard.

'Tis pleaded that where any ſum is advanced upon any hazard, there one may * juſtly inſiſt on more than

* This is the caſe of contracts on Bottomry, where the only ſecurity is given upon the ſhip. A great premium is deemed juſt, becauſe all is loſt if the ſhip periſh.

the reſtitution of the ſum advanced, with all the le- CHAP. 14.
gal intereſt: that in theſe *quaſi contracts*, men are bound to all that could have been reaſonably demanded, or prudently agreed to, if perſons had been in a condition previouſly to have contracted. That to engage a man to advance any ſum where there is an hazard of his loſing all, he muſt alſo have a proſpect of ſome conſiderable gain in caſe the event proves fortunate. What is thus advanced for a child will be entirely loſt if he dies before his labours diſcharge it; therefore much more is due than the ſum and the common intereſt. This claim can ſcarce wholly be denied, nor would it be unjuſt to inſiſt on ſomething more. And yet in other caſes, where a plea of ſingular neceſſity is no greater than that a deſtitute infant has to a bare maintenance, we do not think it reaſonable to oblige to further compenſation than the principal and intereſt. If I take another's horſe to aſſiſt me in eſcaping from ſome imminent danger, and return him ſafe with a proper price for the uſe of him, or if he is ſpoiled, if I pay his full value with intereſt for any time I delayed payment, no more is demanded, and yet had I periſhed he would have got no compenſation. Sure the neceſſity of the child is as great.

Allow that there ſhould be ſome inducement to men to rear ſuch deſtitute children, of whom ſome may die without making any compenſation. It cannot be alleged that the debt of ſuch as die is chargeable on thoſe who live. But 'tis truly reaſonable that each one be charged with ſomething further than

BOOK II. was expended, on account of the hazard run in expending it: and this a wiſe man would conſent to in a like caſe of his own. But this claim cannot make a great addition. Grant that one third of the children born, die within the firſt three years; this would add juſtly one third to the charge of theſe three years and little more. The hazard grows always ſmaller as they advance in years till their labours could diſcharge the debt. On account of ſuch hazards it would never be juſt to demand more than in proportion to the hazards in the ſeveral periods of life, and this would ſcarcely add a fifth part to the ſum of the expences, till they attain to the age of ten or twelve, when their labours begin to compenſate their maintenance, nay to abate the debt.

From the preſerving them from ſlaughter.

'Tis further pleaded, that in ſome barbarous nations, unleſs the captives were bought for ſlaves they would all be murthered. They therefore owe their lives, and all they can do, to their purchaſers; and ſo do their children who would not otherways have come into life. But this whole plea is no more than that of the *negotium utile geſtum*, to which any civilized nation is bound by humanity; 'tis a prudent expenſive office done for the ſervice of others without a gratuitous intention: and this founds no other right than that to full compenſation of all charges and labour employed for the benefit of others. Thus ſuppoſe a merchant buys an hundred ſuch ſlaves; ſo that his whole charges on the voyage, and prime coſt of the captives, adding alſo a reaſonable merchant's

profit upon the ſtock employed, amount to a thou- CHAP. 14.
ſand pounds. Theſe captives are his debtors jointly for this ſum; and as ſoon as the value of their labours beyond their maintenance amounts to this ſum, and the legal intereſt from the time it was advanced, they have a right to be free; and this it would do in ten or twelve years, tho' a third part of them died; and then all his claim, or that of any one under him, would ceaſe.

Cauſes of our miſtakes.

A ſet of inaccurate popular phraſes blind us in theſe matters. Captives owe their lives and all to the purchaſers, ſay they. Juſt in the ſame manner, we, our nobles, and princes, often owe our lives to midwives, chirurgeons, phyſicians, fellow-ſoldiers, ſervants, neighbours: one who was the means of preſerving a man's life is not therefore entituled to make him a ſlave, and ſell him as a piece of goods. Strange, that in any nation where a ſenſe of liberty prevails, where the Chriſtian religion is profeſſed, cuſtom and high proſpects of gain can ſo ſtupify the conſciences of men, and all ſenſe of natural juſtice, that they can hear ſuch computations made about the value of their fellow-men, and their liberty, without abhorrence and indignation!

The obligations from uſing the privileges of neceſſity.

IV. To this ſecond claſs of *quaſi contracts* are reduced the obligations of ſuch who uſing the privilege of neceſſity have done ſome damage to others; which they are always obliged to compenſate as ſoon as they can. Such too is the obligation of one who * received

* For this there was the *condictio indebita*.

BOOK II. as due what afterwards appears not to have been due; or † received a price upon account of a ſervice or preſtation which cannot be performed: or received any thing on account of a contract or promiſe againſt which there lay a juſt exception. All theſe are obliged to reſtore or compenſate what was thus received. Thus likewiſe, partners are obliged to refund proportionally what any one of them has uſefully or by direction expended above his ſhare, upon the common ſtock. Such too is the obligation of one who by any lawful action, or contrivance, or ſtructure of his for his own behoof, has occaſioned damages to others which they were not previouſly bound to bear without compenſation; or had not contracted to bear gratuitouſly: he is naturally obliged to compenſate them.

CHAP. XV.

The rights ariſing from injuries and damages done by others: and the abolition of right.

An injury defined.

I. THE violation of any perfect right of another, is an *injury*, whether by violence to his perſon, attacks upon his character, reſtraints upon his right of liberty, depriving him of his goods, ſpoiling them, ſtopping the profits he had a right to, or withholding what he had a right to claim; whether any of theſe things be done with a malicious deſign, or a ſelfiſh one, or by culpable negligence;

† *Condictio cauſa data cauſa non ſecuta.*

whether * by acting or omitting contrary to our duty. The damage includes, † beside the value of the goods taken away, spoiled, or detained, all losses or inconveniences ensuing upon the want of them; and all interception of gain which would have accrued. CHAP. 15.

Right to compensation of damages.

The damage one has done he is sacredly obliged to compensate to the utmost of his power. The injury is persisted in till this be done: nor can one otherways sincerely repent, or recover the character of honesty. The person injured has a right to compel the author of it to this compensation: without this right, bad men would trample on all the rights of their fellows. 'Tis generally for the publick interest, as well as that of the sufferer, not to remit this right of compelling even by force to make compensation, and of inflicting further evils as punishments; and that not only for the future security of such who suffered, but for the general safety; that all bad men may be deterred from the like attempts, by fear of the like punishments.

Who bound to it when many concur.

When more than one have concurred in an injury, he who by authority or power compelled others subject to him, is the principal cause; *he* ought to make reparation, and suffer the greatest punishment. But when we cannot reach him, as he cannot give impunity to others in injuries, we have not only a right of violent defence against those who injure us at his command, but of obtaining reparation from

* *Faciendo, vel non faciendo secus quam debebat.*
† *Lucrum cessans vel damnum emergens.*

BOOK II. them; nay often of inflicting punishment upon them when they have acted knowingly against their duty, or through culpable ignorance. If the injury be reparable, and of a lighter sort, and the immediate agent undertook it only to avoid vastly greater evils threatened by those who had him in their power, his action perhaps was not criminal, it was excused by the plea of necessity; (of which hereafter) but this plea will not free him from the obligation of repairing any damages done to other innocent persons, as the means of his preservation.

Where many have by concert done any damage, each one is liable for the whole, when we cannot obtain reparation from the rest, even altho' we knew what share each one had in the action, or the spoil. But when at different times, without concert, different persons spoil a man of all his goods, each one seems liable only for his own part of the damage; tho' more may be demanded by way of punishment. In the former case when one has compensated the whole, no more is due to the sufferer on this head. The rest are bound each to refund his share to him who compensated the whole. In punishments the case is otherways; the sufferings of one do not exempt the rest. *Compensation*, and *punishment*, have different ends and measures; nay compensation is often due where there has been no fault.

When one employed in any useful perilous service to the publick, does any damage to others by such inadvertence as is scarce avoidable, the damage should

be compensated by the publick for the interest of which such services were undertaken. Thus if one in the heat of battle hurts any of his fellow soldiers undesignedly. CHAP. 15.

Damages done by hired servants, without orders from their masters, are chargeable only on themselves: when done by orders, they are principally chargeable on their masters. When damage is done by a slave, without his master's fault, the slave is naturally bound to compensate it, as he is a moral agent. But the master having a right to all his labours, by which alone he can compensate, the slave seems in the condition of one indebted to two creditors above the value of all his goods and labours; which therefore must be divided between them in proportion to their claims. Suppose the slave worth forty pounds, this is the master's claim; and that the damage is valued at twenty, this is the sufferer's claim: the master, if he retains the slave, should compensate two thirds of the damage. If the damage had been valued at forty pounds, the master should compensate the half of it. And he is always obliged to give security against future damages upon discovering the injurious disposition of his slave. Should the master compensate the whole damage, or deliver up the slave; in many cases the master would sustain all the loss, and the sufferer none at all, while yet both may be equally innocent; which seems unjust. *Civil laws* sometimes enjoin this, to make masters more vigilant about their slaves. But as slaves are moral agents, they are always liable them- *Damages done by servants.*

BOOK II. ſelves to ſuch puniſhments as may be neceſſary to reſtrain their vices, whatever way damages be compenſated: the change of ſervice might be no puniſhment to them.

Damage done by beaſts.

When damage is done by the beaſt of any one who had no ground to ſuſpect ſuch an hurtful diſpoſition in it; a like deciſion, as to bearing a ſhare of the damage with the ſufferer, would ſeem reaſonable. Some * *civil laws* are ſeverer on the proprietor, to engage the greater care that their cattle be not injurious. Where any unuſual petulance or viciouſneſs has been previouſly known to the owner, he is in all caſes liable to full compenſation; ſince he was obliged to prevent theſe damages, and ſuch negligence is juſtly puniſhable.

The duty of ſuch as do damage to others.

II. When one negligently, or in a ſudden paſſion, has done any damage, he ſhould voluntarily offer full compenſation, and any reaſonable aſſurance an unbyaſſed arbitrator ſhall appoint, againſt any future injuries; and upon this the perſon damaged or injured ſhould be entirely reconciled. Voluntary ſubmiſſion to compenſation, and ſuch aſſurances for the future, are all that can be reaſonably demanded. To refuſe them, when demanded, ſhews an hoſtile injurious diſpoſition.

The injury of delays of payment.

One ſort of damage is ſo common that many ſeem to overlook the injuſtice of it, the delaying payment of debts owned to be juſt. In ſome ſettled debts, as

* Exod. ch. 21. Inſtit. l. iv. tit. 9. Dig. 9. tit. 1. and others *de actionibus noxalibus et de pauperie.*

thoſe upon bonds and ſome others, the law eſtimates the damage of delay at the common intereſt of the money; but by an unreaſonable partiality allows no intereſt upon current accounts. A man of true honour and juſtice may think the common intereſt a ſufficient compenſation to a moneyed man who is not engaged in trade or manufactures, unleſs he ſuſtains ſome other loſs by our having delayed payment. But to men in trade, 'tis manifeſt that the injury and damage of even delaying payment is much more grievous; not to ſpeak of the expenſive ſuits they are forced to, the occaſioning their credit to fail, or of defrauding them altogether, which to common ſenſe muſt appear one of the vileſt and moſt impudent ſorts of theft, and ſhould be puniſhed accordingly, when done with deſign. But the very delay is an injury and a damage always equal to the gain a trader could have made by his money in the ſame time; which is generally double of the legal intereſt: for this double intereſt an action ſhould certainly be allowed, upon all the delays after the time agreed upon in the contract. Not to mention the other grievous diſtreſſes occaſioned by ſuch delays, when the trader's credit fails, and a family is entirely ruined, which could otherways have had a decent ſubſiſtence. Manufacturers and traders muſt charge an additional price upon all goods to make up theſe loſſes by dilatory debtors, and vexatious expenſive ſuits, as well as the loſſes by inſolvent, or fraudulent debtors. Theſe loſſes fall upon honeſt and good oeconomiſts who pay regu-

CHAP. 15.

BOOK II.

larly, as well as upon the dilatory, since on account of these losses all goods are sold so much dearer. By these means too the rates of our goods must be raised when sold in foreign markets: so that other nations, where there is a greater regard to justice, are enabled to sell like goods cheaper, and ruin our trade.

Rights to force in natural liberty.

III. In natural liberty men have a right by force to defend themselves and their neighbours, and all their perfect rights; and to compel others by violence to fulfil any perfect claims they have upon them. We are bound no doubt first to try all gentle methods; but when these fail of success, we have a right to use violence, with what assistance we can obtain from any others who are persuaded of the justice of our cause. In civil societies (as we shall see hereafter) the wisdom and force of the state should be employed for these purposes, to prevent the evils to be feared from the passion of interested men under fresh impressions of apprehended injuries. Citizens are generally understood to have committed these rights of violent prosecution and defence to the magistrate, wherever his aid can be obtained; and to have precluded themselves from exercising them in such cases. The rules about violent defence and prosecution must differ in these different states of liberty, or civil polity, and that in these * three particulars, 1. the causes, 2. the time of beginning violence, and 3. the term to which it may be continued.

* *Causae, terminus a quo, et terminus ad quem.*

1. The cauſes, in natural liberty, are any violations of perfect rights great, or ſmall. 'Tis true one is obliged in humanity to uſe all gentle methods at firſt, and to uſe no more violence or ſeverity than may be neceſſary for his own ſafety, and that of others. We ſhould always be ready to offer a reference, or to ſubmit any diſputed point of right to arbitrators. If the injury be the effect of a ſudden paſſion, of which the author will ſoon repent, and it be reparable; 'tis the humane part to bear it rather than ruſh into fatal violence in our defence. But if the injury be deſigned deliberately, and perſiſted in after friendly remonſtrances, one has a right to defend himſelf by violence even with the death of the invader. To deny men the right of violent defence to the utmoſt in maintaining their ſmaller rights of the perfect kind, would expoſe all good men, and all their properties, as a perpetual prey to the inſolent and injurious. A ſmall injury may be repeated every hour by the ſame perſon, or by others equally inſolent; life would be intolerable without a remedy for ſuch evils. The publick intereſt and ſafety requires that men ſhould be violently deterred from ſuch inſolent attempts.

The juſt cauſes of violence in liberty.

As to the proſecution of ſmaller rights, 'tis hard to ſay that inconſiderable injuries can juſtify our going to the utmoſt extremity, or that it is neceſſary to proceed to any fatal violence to compel men to fulfil any trifling contract, or perform ſome ſmall matter we have a right to claim. We can abſtain from all future commerce with ſuch perſons: and 'tis better to

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suffer a small loss than the reflection that for an unnecessary advantage we were intituled to, or for recovery of what was of no great value, we had taken away the life of our fellow, when we could be otherways secured against like injuries for the future.

They are different under civil government.

A subject under civil government should use no violence against such as are amenable to laws, except in defence against injuries irreparable, either in their own nature, or through the insolvency of the invader. In other cases the safer remedy is an action at law. If the invaders are not amenable to laws, such as fugitives, robbers, or pirates; the rights of natural liberty remain against them; as they do also whereever the hope of detecting and convicting them fails, as in the case of thieves in the night-time.* 'Tis by actions at law alone that we are to compel such as are amenable to them, to fulfil our claims upon them.

The time of commencing violence.

IV. 2. The time when violence is justly begun in natural liberty, is when one has sufficiently declared an unjust and hostile disposition, and desists not upon such admonition, or remonstrance, as we have time to use. One is not obliged to receive the first attack or assault; this may frequently prove fatal; or occasion an irreparable damage. Defence and prevention of injury in this state, is generally less difficult than forcibly obtaining reparation. In all these matters, when our danger is not immediate, since the keenest

* This is probably the reason of the distinction between the *fur nocturnus* and *diurnus* in the twelve tables. The killing is prohibited *nisi telo se defendat*. See also Exod. xxiii. 3.

passions are apt to arise, 'tis best to be directed in all methods of defence and prosecution, by wise arbitrators not immediately concerned in the injury.

Under civil government, tho' the injury intended be irreparable, yet unless the danger be so imminent that we cannot be defended by the magistrate, we should apply to him for defence; as we should always commit to him the violent prosecution of our rights against our fellow-subjects.

How far it may justly be continued.

V. 3. The term to which violence should be continued in natural liberty, is until the danger be repelled, full compensation obtained of all damage and expences occasioned by the injury, full performance of all we can justly claim, and security against like injuries for the future. The interest of society, as well as that of the individual, requires that all these things be obtained.

Punishing may be just in natural liberty.

The publick, or mankind as a system, have even a further right of inflicting such further evils as are necessary to deter others from the like attempts. This last right the person who was in danger of immediate wrong should not execute alone, but in conjunction with others who have no private cause of resentment. Some horrid attempts, such as those of murder, assassination, poisoning, robbery, or piracy, shew so desperate a wickedness, that scarce any sufficient security can be obtained to society against the repetition of the like crimes, but the deaths of the criminals. And as men are much allured to injustice by hopes of secrecy, or of impunity by flight, or successful resistance, it must

BOOK II. be neceſſary for ſociety that the puniſhments of ſuch as are taken and convicted be made ſo great as ſhall generally over-balance the invitation to ſuch crimes from the hopes of impunity, and deter others from the like attempts. This is allowed juſt under civil government, when crimes abound, and many, one half perhaps, of the guilty eſcape conviction, that the puniſhment ſhould be doubled at leaſt, on this very account, that the greatneſs of the evil ſhould outweigh the hopes of impunity. The very ſame reaſons for puniſhments, and for increaſing, or diminiſhing them, hold in natural liberty, tho' the execution will not generally be ſo eaſy or regular. The puniſhment of crimes in this ſtate of liberty is rather more neceſſary, and is juſtified by all the ſame reaſons. That the execution in this ſtate may be attended with more inconveniences, does not prove that there is no right of puniſhing, or that all the right muſt ariſe from civil polity. For by the ſame way of reaſoning we ſhould deny to men in liberty all rights of ſelf-defence, and hold that they too ariſe from civil polity.

Under civil government private men ſhould proceed no further in violence againſt ſuch as are amenable to laws than till the preſent danger be repelled. All the other rights ſhould be left to the magiſtrate.

No infinite right from any injury.

We ſhould always remember on this ſubject that no injury or wickedneſs ſhould make the author ceaſe to be the object of our good-will: and that all our rights to violence are limited by theſe ends, viz. the repelling the injury, obtaining our right, with com-

penſation of damages, and getting ſecurity for our- CHAP. 15.
ſelves and the ſociety againſt like injuries for the fu-
ture. What is inflicted on wicked men for theſe be-
neficent and neceſſary purpoſes is juſt, as far as it is
naturally ſubſervient to and requiſite for them: what
is not requiſite for them, is unjuſt and cruel, even to-
ward the worſt of mankind. Such are all private tor-
tures, the ſating an angry and revengeful ſpirit by in-
ſults, proſtitution to any luſts of ours, or forcing the
criminal's conſcience, if he has any, in matters of re-
ligion. 'Tis very cruel and unjuſt to create further
miſery than is requiſite for theſe purpoſes: when theſe
are anſwered, and as far as conſiſts with them, all hu-
manity, mercy, and compaſſion toward bad men is a-
miable and virtuous. The nobleſt ſpring of puniſh-
ment is extenſive goodneſs, or a regard to the ſafety
and happineſs of the community.

VI. From the preceeding reaſonings deſigned duels *Duels unlawful.*
in civil ſociety muſt generally appear criminal. They
may be lawful when by conſent of two ſtates they are
appointed to put an end to a war. The method is
fooliſh, to end a debate by the death of a brave man,
which arbitration, or the lot, could have decided bet-
ter. But if one ſtate inſiſts on this method, another
may juſtly accept of it, when they are more diffident
of their ſafety another way. But fellow-citizens are
underſtood to have committed the deciſion of their
controverſies to judges.

The injuries which give occaſion to duels, in na-
tions where they prevail, ſeldom can be redreſſed by

BOOK II. the combat, let the event be what it will; and the event is as probably unfortunate to the innocent ſide as to the guilty. The cuſtom indeed was introduced in thoſe ignorant ſuperſtitious ages when all ſort of fortitude was encouraged by the Popiſh clergy, after they had by one artifice or other got it employed in extending their dominions, by cruſades and holy wars; and the ſuperſtitious bravo's had a ſtrange confidence in the interpoſitions of Providence by miracles in behalf of innocence. The charge of falſhood, treachery, diſhoneſty, or other vices, which often occaſions duels, is not diſproved even by ſucceſs. The liar, the cheat, or the knave, the moſt infamous or faithleſs wretch, may be ſucceſsful at the ſword, or aim well with a piſtol, as well as the worthieſt man. The ſucceſs changes no wiſe man's opinion of the character, tho' men may be more cautious, on their own account, of expreſſing their bad opinions. The imputation of cowardice is the only one which duelling can tend to diſprove. But ſome of the vileſt of mankind have not been cowards this way; tho' they act the moſt cowardly part when the moſt valuable intereſts of their country require their ſervice and courage either in peace or war.

How our reputation may be maintained.

When a man is charged with ſome vices, to attempt the life of the accuſer may be an inhuman, and unneceſſary revenge, as it will not confute the charge, but often rather confirms it. Proper vindication ſhould be obtained by law. Our characters, even for courage, may be better vindicated with the wiſer

men, and even with the weaker too, if our country needs any hazardous ſervices in war; nay by our reſolution in times of peace in ſupporting its intereſts againſt any inſidious deſigns of men in power; or by a reſolute maintaining our own rights, and thoſe of our friends, and expreſſing on juſt occaſions our indignation at the vices of others. Many a combatant ſhews a daſtardly ſpirit in ſuch matters. A good man who has done nothing contrary to his duty, is not obliged on account of any unjuſt reſentment of others he may have raiſed, to confine himſelf, or quit any publick appearances about buſineſs or recreation, unleſs his regard to his own ſafety perſuades him to it. If he is then attacked, he may ſhew his courage in juſt ſelf-defence.

One who has wronged another by falſe accuſation, or by divulging inhumanly his ſecret faults, adds a terrible guilt to the former, by accepting a challenge, and attempting the life of the man he had wronged. The fulleſt acknowledgment of his former falſhood, raſhneſs, or inhumanity is the only honourable part he can act. When one has done no wrong to the challenger; yet it is generally great folly to expoſe his own life, and attempt that of another, upon a paſſionate invitation. What if the world is not perſuaded of a man's courage? he may be reputed in other reſpects an uſeful and honourable member of ſociety. And to bear ſuch reproach for a good conſcience, may ſometimes be more honourable than any violent part he could have acted.

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Strong pleas for duels in corrupt ſtates.

When indeed the laws of a ſtate are ſo exceedingly defective as to provide no redreſs for affronts, and very contumelious injuries of our fellow-citizens; or for calumnies, which muſt deeply affect that natural deſire of honour, and averſion to contempt, principles which it is the intereſt of every ſtate to cheriſh in its members; and when a prevailing tho' imprudent and wicked cuſtom has ſupplied a remedy, the only one perhaps remaining againſt theſe injuries which are much more grievous, and ſhew a more wicked and hoſtile ſpirit in the injurious, than thoſe violations of property which we may repel by the death of the invader, wherever the magiſtrate cannot interpoſe, the plea for duelling may appear more favourable. If declining to embrace this remedy generally received, will give a ſanction to the calumny, and further encourage the invader of my reputation, and others of like diſpoſitions, to repeat their inſults, and extend them to others; and at the ſame time betray, in the judgment of all around, ſuch a mean love of animal life in me, and a preference of it to all honour and eſteem among my fellows, as muſt be diſapproved by ingenuous minds; I may have as ſtrong plea of neceſſity in ſuch circumſtances: nay ſome high ſpecies of moral obligation, where one could overcome all perſonal animoſity or reſentment, may often ſeem to perſuade a good man to hazard his own life in aſſerting his character, and freeing human ſociety from ſuch inſolent and injurious invaders of what is juſtly of higher eſtimation than our external property. What-

ever guilt there is in such conduct, it is certainly chargeable principally on the legislator, for such negligence about the defence of the citizens in their dearest rights, as forces them upon such measures. CHAP. 15.

The sole ends of all just violence.

VII. But we should always bear in mind that what alone can justify violence must be its reference to the grand ends above-mentioned. When the injurious have offered reparation, complied with all our just demands, and submit to whatever punishment prudent arbitrators shall judge necessary to deter others, we then have obtained all the just ends of violence; and to persist further in it, must be cruel and unjust. Thus that side which began a war with justice, ceases to be in the right, the instant it persists in violence after the reasonable terms of peace are offered by the other side.

What is due where compleat reparation is impossible.

Where injuries cannot be repaired or fully compensated, yet we ought to do all that we can. If one has unjustly taken away life, yet not in such a manner as exposes him to capital punishment, he is bound to the utmost of his power to compensate the loss to the family that suffered, by all liberal and friendly offices. If one is become bankrupt by his own vices, or negligence, and cannot pay his creditor, he is bound to apply all his labours to their service; they have a perfect right to them.

Imprudent laws in these cases.

The laws of some states are strangely inconsistent. If one by stealth wrongs his neighbour in a trifle, the punishment is capital. If another by a course of extravagance and debauchery, or by the grossest negli-

BOOK II. gence, ruins all who have been ſo friendly as to truſt him; nay fraudulently takes up loans from friends when he knows himſelf to be inſolvent; there is no other puniſhment than a fooliſh one, which burdens either the ſtate, or the creditor, a conſtant impriſonment. And no other pretence for this than that ſome are bankrupts without any fault of theirs. Why ſhould ſuch men be impriſoned? Is there not an eaſy method of tryal in this caſe, to diſtinguiſh ſuch as innocently fail, from thoſe who are ruined by their vices? We commit our lives to juries in other matters: a jury of judicious neighbours could examine into a man's ſtock when he began; could inſpect his books, and examine witneſſes upon his conduct and manner of life; by which they could find what the calamity was owing to. If to unfortunate accidents, without groſs negligence, debauchery, or vanity; the misfortune ſhould be born patiently by the creditors, and the debtor be at liberty; only obliged to diſcharge his debts whenever he was able; and to apply any profits he could make beyond a moderate maintenance to the diſcharge of them, if the creditors inſiſted on it. But as to thoſe who are bankrupt through their own vices, as they are often far worſe criminals than thieves, and do greater wrongs, a capital puniſhment, if it could do any good, would be no more cruel in the one caſe than the other. To condemn them to perpetual ſlavery would have a better effect; in contributing a little to repair the wrongs they had done, and to deter others by the example.

How rights are abolished.

VIII. The originals of these ordinary rights, and the contracts on which they are founded, will shew also how they are abolished. The several ways may be reduced to these three classes. 1. Prestation or fulfilling the claim, either by the person himself, or by any other in his name, by commission from him, or for his behoof. No creditor is bound to transfer his claim upon his debtor to a third person without the debtor desires it, or it be plainly for his interest; this third person may have a malicious intention of distressing him: but upon the debtor's desire he must accept of payment of any common value or service from the person whom the debtor appoints. In homages indeed, or services of honour, the dignity of the person who pays them adds much to the value: and, in works of genius, the ingenuity of the artist is chiefly regarded. In these the person obliged cannot substitute another, without consent of him to whom they are to be performed. Under this head are justly included *compensations*; which are justly made when two persons are mutually creditors to each other in equal values on different accounts.

2. Another way of abolishing rights and obligations is the voluntary remission of the person who had the claim, where the right was wholly constituted for his behoof, and no law prohibits such remissions; and they may either be gratuitous, or for some * onerous cause.

* Such as *delegation*: when the debtor transfers to the creditor his equal claim upon a third person; or quits some equivalent claim he had upon his creditor, or some friend of his.

BOOK II.

3. The third way is by the defect of ſome condition upon which the obligation was ſuſpended; under which we may include the perfidy of one party, which ſets the other free if he pleaſes. Among the conditions the defect of which may make obligations void, the life of either party may be one, or his continuance in the ſame ſtate or office in ſome contracts. Such contracts or obligations as preſuppoſed a certain ſtate or office, or reſpected only the life of the perſon obliged to any payment or performance, ſo as not to bind his heirs, expire along with him, or when he loſes the ſtation preſuppoſed. Such as regarded only the perſon who had the claim, and were not conſtituted for the behoof of his heirs, expire in like manner upon his death. It may always be known from the nature of the contract or promiſe, or other foundations of the ſeveral claims, whether they are extinguiſhed by the death of either party, or not.

CHAP. XVI.

Concerning the general RIGHTS *of* HUMAN SOCIETY, *or Mankind as a Syſtem.*

Rights of mankind as a ſyſtem.

1. HItherto we have conſidered the rights and obligations peculiarly reſpecting certain individuals, and conſtituted for their happineſs, in conſiſtence with and ſubſerviency to the general intereſt. But as we not only have the narrower kind affections, and a ſenſe of duty in following their motions by good

offices to individuals, and by abſtaining from what may hurt them, but more extenſive affections toward ſocieties and mankind; and an higher ſenſe of obligation to do nothing contrary to any publick intereſt, there are many obligations of a more extenſive kind upon men to conſult the general intereſt, even where no particular perſon is more concerned than others; and mankind, as a ſyſtem, ſeems to have rights upon each individual, to demand of him ſuch conduct as is neceſſary for the general good, and to abſtain from what may have a contrary tendency, tho' the wrong conduct no more affects one individual than another. Of theſe rights and obligations ſome are of the perfect kind, where compulſion may be juſt; others are of a more delicate obligation, not admitting compulſion, where our duty muſt be left to our own prudence and ſenſe of virtue. Of the perfect kind are theſe following. CHAP. 16.

1. As each individual is a part of this ſyſtem, the happineſs and duration of which depends on that of its part; as every one may be of ſome ſervice to others in ſociety, were it only by advice and example, if they have ſuch diſpoſitions as they ought to have: as we are formed by nature for the ſervice of each other, and not each one merely for himſelf; each one is obliged to continue in life as long as he can be ſerviceable, were it only by an example of patience and reſignation to the will of God; when no important intereſt requires his expoſing his life to dangers. Human ſociety has a right by force to prevent attempts of *To prevent ſuicide.*

BOOK II. *ſuicide* from any unreaſonable dejection, or melancholy, or chagrin; and theſe general rights of all, each one as he has opportunity, by what aſſiſtance he can obtain, may juſtly execute. No other bond is requiſite to intitle a man to interpoſe in ſuch caſes, but the common tye of humanity. Did ſuch immoderate paſſions prevail; were ſuicide deemed a proper method to eſcape from the ordinary vexations of life, or from the ſevere chagrin upon diſappointments, and were there no reſtraining ſenſe of duty; many of the braveſt ſpirits might raſhly throw away thoſe lives, which might have become joyful to themſelves, and uſeful and ornamental to the world. Mankind have a right to interpoſe againſt ſuch raſh deſigns.

To preſerve the human race.

II. Another general obligation on the individuals toward the ſyſtem, reſpects the continuing the human race. Such as are not hindered from domeſtick cares by ſome more important ſervices to mankind, ſeem obliged to contribute their part to this important purpoſe, by bearing their ſhares of the burden of educating human offſpring, if they are in ſuch circumſtances as enable them to do it. This duty however, muſt in a great meaſure be left to the prudence of individuals: it would ſcarce be wiſe in any ſociety to compel them to have offſpring, whether they deſired it or not; tho' there may be ſtrong reaſons for making celibacy burthenſome and diſhonourable. In this matter, and that above-mentioned of preſerving our own lives, nature by powerful inſtincts implanted has pretty generally ſecured the performance of our

duty. Such inſtincts however are ſo far from preven- CHAP. 16.
ting or ſuperſeding the notion of moral obligation, that they ſtrongly eſtabliſh it, and are the moſt direct indications of it.

And compel parents to ſupport their children.

But as to ſuch as deſire offſpring, or are the occaſions of their coming into being, as they are under moſt ſacred obligations, indicated abundantly by the parental affection, to give ſupport and education to their offſpring, and to form them into proper members of ſociety; ſo mankind as a ſyſtem, and every ſociety, have a right to compell them to diſcharge theſe offices. They have a like right to prevent ſuch ways of propagation as would make a proper education impracticable, by leaving the fathers uncertain, and thus caſting the whole burden of it upon the mothers. 'Tis the intereſt of mankind to prevent ſuch abuſes, even tho' the deluded mothers voluntarily yielded to the enſnaring ſolicitations. Of this more hereafter.

To prevent all monſtrous luſt.

Mankind as a ſyſtem have a like right to prevent any perverſions of the natural inſtinct from its wiſe purpoſes, or any defeating of its end. Such are all monſtrous luſts, and arts of abortion.

To prevent the deſtruction of any thing uſeful.

III. There is a like right competent to mankind, and an obligation on each one, that nothing uſeful to men ſhould be deſtroyed or ſpoiled out of levity or ill-nature; tho' no individual, or ſociety, has a more ſpecial right in it than another: that nothing uſeful ſhould be deſtroyed, even by thoſe who had acquired property in it, without any ſubſerviency to ſome pleaſure or conveniency of theirs. To do ſo muſt evidence

BOOK II. an envy or hatred of the reſt of mankind. Thus fountains ſhould not be ſtopped or poiſoned; no uſeful products of the earth, which many ſtand in need of, ſhould be capriciouſly deſtroyed by the owners, becauſe they have abundance other ways for their uſe: no noxious creatures ſhould be brought in, and turned looſe in places formerly free from them.

The right of repelling all injuries and puniſhing them.

IV. 'Tis alſo the right and duty of the ſyſtem which each one ſhould execute as he has opportunity, to aſſiſt the innocent againſt unjuſt violence, to repel the invader, to obtain compenſation of damage done, and ſecurity againſt like attempts for the future. Without this right all the enjoyments of men would be very precarious, ſince few could confide in their own ſtrength to repel the combined forces of any cabals of the injurious. As the example of ſucceſsful injuries tends to invite others to like practices, 'tis requiſite for the general good that this bad influence be counteracted as often as poſſible, by the inflicting of ſuch evils upon the injurious, as by their terror may overballance in their minds, and thoſe of others who may have like diſpoſitions, all allurements to injuſtice from the hopes of ſecrecy and impunity. This is the foundation of the right of puniſhing, which, as we ſaid above, men have in natural liberty, as well as in civil polity. The miſtakes and inconveniences which may more frequently attend the execution of this right in natural liberty, do not take away the right, but ſhews the great uſe of civil polity.

A right to force men to divulge inventions of general uſe.

V. A like right we may juſtly aſſert to mankind

as a syſtem, and to every ſociety of men, even before civil government, to compel any perſon who has fallen upon any fortunate invention, of great neceſſity or uſe for the preſervation of life, or for a great increaſe of human happineſs, to divulge it upon reaſonable terms. The inventor, no doubt, may have a right to make large advantages of what his diligence, ingenuity, or felicity has diſcovered; and is juſtly intitled to a compenſation for this advantage, in proportion to the good it brings to ſociety, or the labour which the invention may have coſt him, or the profit he could have made by it. But if a man is exorbitant in his demands, or ſo inhuman as not to employ his diſcoveries where they are wanted, or will always retain the ſecret to himſelf, ſo that it muſt periſh with him; if the matter appears to be of great importance to mankind, a ſociety has a right to compel him to arbitration about the proper compenſation to be made for the diſcovery; and to force him, upon juſt terms, to make it.

A right of compelling men to ſome induſtry.

VI. 'Tis juſtly alſo reputed a right of human ſociety to compel each perſon to ſuch labours and induſtry as he is capable of, that he may not be an unneceſſary burden upon the charity or compaſſion of the induſtrious: to compel parents ſo to educate and habituate their children, that they may be able to ſupport themſelves, while they continue in health. Enough is allowed to the natural liberty of mankind, and the parental power, that men may chuſe occupations as they incline for themſelves and their children. But as the univerſal diligence of all is plainly requi-

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site for the good of mankind, each one is bound to his share of it, and is justly compelled to it, unless he can give sufficient security to the society that he shall be no burden to it. A like right any society has to exercise the parental power over orphans, in educating them to some useful industry, and obliging them to such reasonable services after they are adult, as may defray all prudent expences made upon them, and for their behoof, during their minority.

The rights of funerals.

VII. One may justly reckon among these rights of human society that one also of preserving a just veneration toward the dignity of our kind, and preventing any practices which would tend to make it despicable in the judgment of the vulgar; or which would have a tendency to introduce savage and inhuman dispositions. The dead carcases of men can have no rights, and yet 'tis plain men cannot so entirely separate in their thoughts the body from its former inhabitant, as to be unaffected with the treatment of the body. All nations have expressed their affectionate or grateful remembrance of the man, by some rites or other deemed respectful toward the body: and repute some sorts of treatment of dead bodies as inhuman and savage, expressing either hatred and contempt of the man, or a disrespect in general for our fellow-creatures. Every society therefore should prevent such practices as would incourage savage manners, or such as are the usual testimonies of contempt and hatred, toward any who have not by their vices incurred the just abhorrence of all good men.

VIII. Theſe and many of like nature we may count the perfect rights of mankind. There are others of the imperfect kind, to be left generally to the prudence and virtue of perſons concerned, to which correſpond the general duties or offices incumbent on each individual toward mankind in general, previous to any ſpecial tye. The ſame general maxim holds in theſe rights which we obſerved about the rights of individuals, viz. "The fulfilling or not-violating the "perfect rights, argues rather mere abſence of odi- "ous vices, than any laudable degree of poſitive vir- "tue: whereas the matter of praiſe, and the natural "evidence of high virtue conſiſts in a ſtrict regard to "the imperfect rights."

CHAP. 16.

Imperfect rights of mankind.

The offices indefinitely due to mankind are ever incumbent on all while the ſyſtem remains, however they are ſubdivided into ſeveral diſtinct ſtates or polities. The duties are not taken away in a civil ſtate, but the exerciſe of them may be limited as far as the political relation and the intereſt of the ſtate may require. The more extenſive affections, of which we find our nature ſuſceptible, and that high ſenſe of approbation attending them, plainly ſhew our obligations toward mankind as to the following duties, tho' no one individual had a more ſpecial claim upon us than another; and therefore we may conceive them as anſwering a general right or claim of the ſyſtem upon each of its members.

First, each one is obliged to cultivate his own powers of body and mind ſo as to fit himſelf for what offices

All obliged to improvement of their ſouls and bodies.

BOOK II. of goodneſs and humanity his ſtation may allow; to ſtore his mind with uſeful knowledge, and with the grand maxims which conduce to a virtuous life; to acquire virtuous habits, and a power of reſtraining all the lower appetites and ſelfiſh paſſions, which may oppoſe them; and to prepare even his body by temperance and exerciſes for ſuch honourable ſervices as his mind may recommend.

To give a good example in their own conduct.

Again: as men are much influenced by example, and our ſeveral affections are naturally contagious, 'tis our duty to the publick in our whole deportment to ſhew an example of all kindneſs, courteſy, and inclination to oblige and aſſiſt any of our fellows, where no duty of more importance, or ſpecial claim of ſuch as we are more nearly attached to, calls us away: we ſhould acquire habits of this ſocial kind; and guard againſt whatever may irritate our fellows, or alienate their affections from us, or from each other, or cauſe animoſities and ill-natured paſſions among them. No wonder that courteſy and good-manners are ſo engaging; they are the natural dreſs of virtue, the indications of thoſe affections which are truly honourable and lovely. The ſeveral duties in conſequence of ſuch diſpoſitions may anſwer to the particular rights of individuals, but the preparing the heart, and acquiring the habit, is an indefinite duty toward all.

To diffuſe principles of virtue.

'Tis alſo our duty to our kind to diffuſe as far as we can the principles of virtue and piety, which ſhew that univerſal goodneſs is the true intereſt, dignity, and perfection of each individual; as the univerſal pre-

valence of ſuch ſentiments is the greateſt advantage to human life. We ſhould concur in every wiſe inſtitution for this purpoſe: our whole converſation ſhould evidence this perſuaſion, and ſhew it to the world that wealth, power, or ſenſual pleaſures, are not the ſupreme objects of our purſuit for ourſelves, or ſuch as are dear to us: that the covetous, ambitious, or voluptuous are not the perſons whoſe ſtate or temper we count happy. And thus on our part we may contribute to prevent or break theſe groundleſs aſſociations and falſe imaginations diffuſed among men by the vicious.

The general obligations to an active life.

IX. 'Tis alſo the duty of each individual toward mankind, as well as toward his peculiar friends or relations, to follow ſome profeſſion or buſineſs ſubſervient to ſome common good. Men of wealth ſufficient for themſelves and their families, are not perhaps obliged to any lucrative profeſſions; but they are rather more than others obliged to an active life in ſome ſervice to mankind. The publick has this claim upon them: the divine providence calls them to extend their views of publick good, in contriving wiſe forms of polity, or prudent laws; in encouraging the more ingenious and uſeful arts; in ſupporting diſtreſſed innocence; and employing all their weight and influence in ſociety for ſome generous purpoſes; as they are exempted from the lower and leſs honourable employments. When they are deaf to this voice of God, and give themſelves up to ſloth and ſenſuality, they are uſeleſs and corrupt members of ſociety, unworthy

BOOK II. of that external deference they expect: and indeed 'tis only outward ceremony and baſer flattery they receive; for they muſt be inwardly deſpiſed by all wiſe men.

How we are to chuſe our buſineſs or profeſſion.

In chuſing a profeſſion or buſineſs for life, regard ſhould be had to theſe two things, the dignity or uſe of the buſineſs, and the probability of our ſucceeding in it. Tho' the nobler arts are more deſirable in themſelves, yet 'tis plainly neceſſary for mankind that far more hands be employed in the lower; and as a few hands are ſufficient for the nobler arts, ſo there are fewer whoſe genius and circumſtances promiſe ſucceſs in them. Nothing is more uneaſy to a man of any ſpirit, or ſenſe of honour, than to be ingaged in a charge or office for which he has not ſufficient abilities; as he muſt be continually expoſed to envy, and to juſt cenſures. 'Tis a man's own intereſt for his inward peace of mind and his reputation, rather to be placed lower than his merit and abilities, than to be ſet in a ſtation too high for them. This folly or vanity of aiming at ſtations or offices too high for us, is alſo injurious to ſociety; as the office will not be well diſcharged by us, and worthier men by our means ſhall be excluded.

The dignity of certain profeſſions or arts.

The dignity of arts or occupations depends on theſe two jointly, the uſe they afford to mankind, and the genius requiſite for them. The profeſſion deſigned to inculcate true principles of piety and virtue is always juſtly ranked among the moſt honourable on both accounts. The corruptions and depravations of the

beſt things may become moſt pernicious. Such is this office when it is abuſed to inculcate pernicious ſuperſtitions, to foment hatred and rancour about trifles, or made a ſtep to ambition, avarice, or luxury; or an engine of tyranny and oppreſſion. CHAP. 16.

Legiſlators, magiſtrates, adminiſtrators of juſtice, or ſuch whoſe buſineſs it is to protect innocence againſt fraud and oppreſſion, have honourable offices, both as they are exceedingly uſeful, and require great abilities. The military offices are honourable for the ſame reaſons. But nothing is more deteſtable than when theſe employments are perverted to the oppoſite purpoſes, and are engines of tyranny, injuſtice, or cruelty.

On the ſame accounts the profeſſions of the arts and ſciences which afford ſublime pleaſures in theory, and great uſe in the practice, are juſtly honourable; ſuch as mathematicks, natural philoſophy and hiſtory, medicine, and others. The arts of ſculpture, painting, drawing, muſick, and elegant and magnificent architecture; tho' they are not ſubſervient to the neceſſities of life, yet have always been reputable in civilized nations for the refined pleaſures they afford, and the elegant genius requiſite in the artiſt.

The lower mechanick arts are of great uſe in life, but they are not ſo much admired; becauſe talents ſufficient for them are more common. And yet men employed in them may be truly honourable in the higheſt degree for moſt eminent virtues. Of theſe agriculture has been generally moſt reliſhed by the fineſt ſpi-

BOOK II. rits, not only for its * advantages, but alſo for its delightful contemplations, variety of ſweet exerciſes, and innocent pleaſures.

What gives hope of ſucceſs.

The probability of ſucceſs in any profeſſion or art depends on many circumſtances. The advantages of fortune, the conſtitution of health, the authority of parents or friends, our opportunities, and, above all, the impulſe of our genius. Fortune without genius never ſucceeds well: a genius often ſurmounts the oppoſition of fortune. In theſe conflicts our genius, tho' mortal, ſeems the victorious divinity, and fortune only a mortal, as Cicero † expreſſes it.

We ſhould always repute it as our buſineſs in the world, the end and purpoſe of our being, our duty to our kind, the natural uſe of the powers we enjoy, and the moſt ſuitable teſtimony of our gratitude to our Maker the parent of all good, to contribute ſomething to the general good, to the common fund of happineſs to our ſpecies.

The more ſpecial duties to particular ſocieties in the adventitious ſtates and relations, are the ſubject of the following book.

* *Cicero de ſenectute.* c. 15, 16, 17. † *De officiis.* l. i. c. 33.

CHAP. XVII.

The extraordinary RIGHTS *arising from some singular* NECESSITY.

Narrower affections must yield to the more extensive.

I. WE have hitherto considered the common laws of nature, and the ordinary duties, partly discovered by some of these narrower affections of the social kind which are the immediate objects of approbation, and partly by the more extensive ones, which we approve in an higher degree. It was often observed above, that the more extensive affections are naturally designed to controll and limit the narrower, and that the heart can fully approve itself in its calmest reflections, when it has counteracted the warm motions of parental affection, pity, gratitude, friendship, in order to gratify some more extensive generous affection; tho' these narrower affections are in their own nature lovely, and the constant object of approbation when they do not interfere with any more venerable extensive affection. Now 'tis manifest to all men of understanding, who are not culpably deficient in the more extensive affections of soul, that many unusual cases may occur in which our counteracting the ordinary dictates of natural affection, pity, gratitude, or friendship may in the whole of its consequences do greater good, and prevent greater evils, than adhering to them in those cases. Nay that adhering to them in those extraordinary cases may sometimes occasion greater evils to our country, or to mankind, than all the virtues

BOOK II. any one mortal can exert will ever repair: all which evils might have been prevented by our receding in thoſe extraordinary caſes from the ordinary rule founded on theſe narrower lovely affections. 'Tis not conceivable then that in ſuch caſes any principle in our hearts can juſtify our ſacrificing the moſt important and extenſive intereſts of mankind to the ſmaller and narrower; or that upon reflection one could condemn himſelf for a contrary conduct, in following the moſt extenſive affections, which the heart muſt more approve than any of the narrower, as they are aiming at a more important good. To ſuppoſe ſuch a conſtitution of ſoul would be as abſurd with a view to the publick ſyſtem, as it would be in reſpect of the private ſyſtem in point of prudence, if one approved himſelf in gratifying any trifling appetite ſuch as thirſt or itching, when this indulgence occaſioned certain death, and thus defeated the grand ſelfiſh determination toward our own preſervation and happineſs.

The narrower ſhould not be ſuppreſſed but overballanced.

To retain every amiable diſpoſition of the ſoul which can give an entire ſelf-approbation, in our counteracting theſe narrower generous affections, 'tis enough that we feel all theſe narrower affections in their juſt proportion of ſtrength, ſo that they could excite us to all wiſe and generous offices of compaſſion, gratitude, and friendſhip, tho' attended with great hazards or expences to ourſelves, and could ſurmount our merely ſelfiſh paſſions; while yet they are ſubjected to the nobler and more extenſive affections of the generous kind. To act the part which we are per-

ſuaded tends to the moſt extenſive good, in oppoſition to all narrower intereſts, with an heart quite inſenſible to theſe amiable narrower affections, can ſcarce gain our entire approbation. Some lovely parts of the natural ſtructure of the heart are awanting, and the beneficent office may in ſuch tempers argue no great ſtrength of the extenſive affection: whereas when all the narrower kind affections are in their due ſtrength, and yet a more extenſive and venerable principle reſolutely counteracts their motions, the ſoul ſeems in its natural order; and muſt have an entire complacence with itſelf, as it feels every diſpoſition within which it naturally approves, and that too in its proper ſtrength.

How the ſpecial laws are diſcovered.

II. For the further illuſtration of this ſubject let us recollect how it is that we diſcover the ſpecial laws of nature. We have no univerſal precepts enuntiated by God, in words, binding us in all caſes where God does not by words declare ſome exceptions. The laws of nature are inferences we make, by reflecting upon our inward conſtitution, and by reaſoning upon human affairs, concerning that conduct which our hearts naturally muſt approve, as tending either to the general good, or to that of individuals conſiſtently with it. Theſe inferences we expreſs in general precepts: they are diſcovered to us ſometimes immediately, ſometimes by induction, when we ſee what conduct ordinarily tends to good. Now 'tis impoſſible for us to have all poſſible caſes and circumſtances in view, ſo that we could diſcern that the inference holds in them

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all. We form our general rule or precept from what we ſee tends to good in all ordinary caſes. But ſhould we ſee that in ſome rarer caſes a different conduct would in the whole of its effects do greater good than the following the ordinary rule in theſe caſes alſo, we then have as good a law of nature preceptive or permiſſive to recede from the ordinary rule in thoſe rarer caſes, as we have to follow it in ordinary caſes. Theſe exceptions are parts of the law, as well as the general rule.

Two general precepts admit no exceptions.

The two general precepts of piety to God, and promoting the general good of all, admit of no exceptions; as they preſent to the mind the immediate objects of the higheſt approbation. The ſecond of theſe is the foundation or ground of all the exceptions from the more ſpecial laws. We muſt not imagine or ſpeak thus, "that a great neceſſity, or a publick intereſt, "makes it lawful to ſin, or to break certain laws of "God and nature." Such propoſitions contain contradictions in their terms. We ſay, that "ſuch con-"duct as in ordinary caſes would be vicious, and con-"trary to law, does in ſome rarer caſes of neceſſity be-"come good and lawful;" or that "theſe rarer caſes "are excepted in the general law."

Improperly alledged caſes of neceſſity.

III. There are innumerable caſes in which if we only conſider the immediate effect, it were better to recede from the common rule; and yet the allowing a liberty to recede from it in all like caſes would occaſion much more evil by its remote effects, than the particular evils in adhering to the ordinary rule. Theſe

are not the caſes of neceſſity here intended. For in- CHAP. 17.
ſtance. A man has made an imprudent bargain of greater detriment to himſelf than of advantage to the other party, and yet the other party inhumanly inſiſts on it. In the immediate effect, it were better he did not obſerve his contract. But ſuch caſes happen ſo often, ſo many would uſe this plea upon trifling miſtakes and inequalities, men would grow ſo careleſs in their dealings truſting to this redreſs, and ſo many vexatious diſputes would ariſe, that all faith in commerce would be deſtroyed; not to mention the inward immediate diſlike every man muſt have of ſuch breach of promiſe, and ſuch inconſtancy, for every trifling intereſt. The performing therefore of what we contracted, according to the general rule, muſt be our duty even in theſe inconvenient caſes, when the other party inſiſts upon it; becauſe of the greater remote evils which would enſue from violating ſuch contracts.

Where one asks us improper queſtions, where it were better that the truth were concealed from him; if our ſilence would diſcover it, and no true evaſive anſwer occurs to us; did we only regard the immediate effect, it might appear eligible to ſpeak contrary to our ſentiments. But the inward averſion we feel to falſhood ſhould of itſelf diſſuade us from it upon ſuch occaſions; and the diſtant effects of allowing ſuch liberty, for every ſmaller advantage, or to avoid any little inconveniences, are ſo pernicious, that we muſt condemn falſhood on ſuch occaſions; ſince were it al-

Book II. lowed, there would be such frequent use made of it that there would be an universal suspicion of all conversation, and all mutual confidence in it be destroyed. These therefore are not the intended cases of necessity exempting from the obligation of the ordinary rules.

When the plea of necessity is just.

This plea therefore is then only just, when the whole good effects of receding from the ordinary rule, whether immediare or more remote, are so great, and the evils ensuing upon our adhering to it in those rarer cases so pernicious, as will in all probability overballance all the evils to be apprehended from our counteracting the rule in this and such like rarer cases. Receding from such rules for every smaller present advantage, or for avoiding smaller inconveniences, must be very faulty. Such liberty, generally taken, would be highly pernicious, destroying all honesty and mutual confidence. But the case is otherways when men claim this liberty only for very great publick advantages, or for prevention of some extraordinary calamities. This liberty allowed or asserted only in cases of the utmost importance, will not be misapplied to every trifling private inconvenience, except through such unfairness and depravity of temper as would make one violate an acknowledged law of nature under such temptation, even without any tenet about these singular rights of necessity.

The several rules admit of exceptions more easily, as they are less important.

IV. 'Tis plain here that some of the ordinary rules are of much greater importance than others; so that fewer cases can possibly happen wherein superior ad-

vantages can accrue to mankind from counteracting them. The more important any rule is, and the greater the evils are which obedience to it prevents, and which enſue from the counteracting it, the greater alſo muſt be thoſe evils to be declined, or advantages to be obtained, which can juſtify the receding from it. Some rules are made ſo ſacred by the moral feelings of the heart, and by their continual great importance to the publick good, that ſcarce any caſes can happen in which departing from them can occaſion in the whole ſuperior advantages to mankind; or, which is the ſame thing, ſome laws of nature admit no exceptions. But other laws are only morally univerſal, holding in all ordinary caſes, but admitting ſome exceptions. To deny all exceptions, upon pleas of neceſſity, contradicts the ſenſe of mankind. In ſome laws of leſs importance to the good of men, pleas of neceſſity are allowed valid by all. As we aſcend to more ſacred and important laws, the matter grows more doubtful whether any neceſſity can found a juſt exception.

Examples of theſe caſes.

'Tis an ordinary law that "no man ſhould uſe or "deſtroy any part of another's property without his "conſent." Suppoſe a good man flying from a murderer, from whom he cannot eſcape on foot: he ſees a neighbour's horſe, but the neighbour is abſent, or is ſo inhuman as to refuſe the uſe of him. The taking his horſe in ſuch a caſe is juſtifiable, tho' the beaſt ſhould be ſpoiled, or killed. A populous city or country is indangered by the failing of a dam or dyke, and

BOOK II. the lives as well as the fortunes of thouſands of innocents are at ſtake. There is ſtore of timber fit to ſupport and repair it, at hand; but the proprietor is abſent, or refuſes the uſe of it, and the danger is immediate, allowing no time to obtain materials elſewhere: 'tis no crime to diſregard property in ſuch caſes. The immediate feelings of our hearts juſtify it, as well as a compaſſionate regard to a greater good.

This plea exempts not from obligation to compenſate damages.

We muſt never, indeed, extend this pretence further than the real neceſſity extends. The *primary right* of the proprietor in the caſes above-mentioned, muſt yield to a great neceſſity; but his *ſubſidiary right* to compenſation of the loſs he has ſuſtained for the ſake of others, may remain when the neceſſity does not extend to it. They are obliged, as far as they can, to make full compenſation, who are ſaved at his expence.

This plea not peculiar to civil polity.

V. 'Tis vain to juſtify ſuch ſteps only by ſome † eminent rights of civil governors over the goods of ſubjects. The pleas of neceſſity have the ſame juſt foundation in natural liberty, upon ſome plain tendency to ſome important intereſt of mankind. The right of magiſtrates is founded only in this, that the execution of the rights of the people in ſuch urgent neceſſities is committed to them, as is alſo the violent defence and proſecution of all their other rights: from which none can infer that all right of violent defence or proſecution is derived from civil polity. Were there no juſtifying pleas of neceſſity in natural liber-

† *Dominium eminens*, or as others more properly call it, *Jus imperii eminens*.

ty, there is no accounting for this eminent right of magiſtrates in civil polity. CHAP. 17.

Some higher caſes, as to property.

Come to higher caſes. A ſhip loadened with proviſions and ammunition comes into the port of a city unjuſtly and cruelly beſieged, where a maſſacre is intended by the beſiegers; ſuppoſe the citizens almoſt periſhing with famine and wanting military ſtores, and having neither money nor goods which the merchant would take for his grain or ammunition, whereas he can get an high value from the beſiegers. Muſt the townſmen here regard his property, and expoſe themſelves to periſh with their families, either by famine, or a maſſacre; nay perhaps expoſe a whole nation to the moſt cruel ſlavery? No certainly. They may juſtly take theſe goods by force, tho' there be the greateſt hazard that they ſhall not be able to compenſate their value; ſince if the city is taken, they are all ruined.

And life.

'Tis a ſacred law of nature not to take away the life of an innocent man, or exclude him from any method of ſelf-preſervation in his power; ſuppoſe I know that a man juſt landed is infected with the plague, and furious; that he is running into a throng aſſembly, that I know not their language to warn them. I can preſerve the lives of thouſands by ſhooting this man, who yet may poſſibly recover. Can this be a crime, if there was no other way of preſerving thouſands of innocent men and their families from the infection that is ſo generally fatal? Laws prohibit under pain of death any perſon to come aſhore from a

BOOK II. ſhip that came from an infected place. Some of the crew may be infected, and yet others remain perfectly ſound, who might be entirely ſafe were they allowed to come aſhore. Upon the very ſuſpicion of this danger they are often kept aboard, and expoſed to periſh by the infection. In an overloaded boat not only goods are thrown over board without the conſent of the proprietors, but innocent men too, while yet none can demonſtrate that the boat with this over-charge could not poſſibly come ſafe to ſhore.

Veracity. May not a ſingular neceſſity ſupercede the common rule of veracity too. Suppoſe a Genghiſcan, or any ſuch Eaſtern monſter, reſolved on the maſſacre of a whole city if he finds they have given any protection to his enemy, and asking a citizen in whom he confides about this fact, whether his enemy had ever been ſheltered by the citizens; and that by deceiving the monſter, he can preſerve the lives of hundreds of thouſands, and of their innocent babes; whereas telling him the truth ſhall occaſion the moſt horrible ſlaughter: could a wiſe man's heart reproach him juſtly for breaking through the common law of veracity, and conquering the natural impulſe toward it, upon ſuch ſtrong motives of humanity? Nay who blames Tullus Hoſtilius, or Eumenes, for deceiving their own ſoldiers, when it was the only probable means of their ſafety, and the ſafety of their country? Had either of them declined this ſtep when ſuggeſted to them by one of their counſellors, they had juſtly been charged with too high and ſuperſtitious an at-

tachment to one ſpecies of morality, and that not the ſupreme one. CHAP. 17.

Suppoſe a juſt prince defeated by an inhuman brutal uſurper, and flying with his family and the braveſt men, the only hope of the ſtate; and that they get into an houſe near the ſea whence they hope preſently to make their eſcape; and that the uſurper, ſeeing another party fleeing paſt that houſe, asks one whom he takes for a friend to his cauſe, who yet is ſecretly faithful to his prince and the liberty of his country, whether the prince be fled into that houſe? To heſitate, or be ſilent, on ſuch an occaſion diſcovers the whole truth. But his ſpeaking contrary to his knowledge may preſerve the only remaining hopes of a nation. Can this too be criminal?

'Tis ordinarily a crime in a ſubject, or in any private man, to kill his fellow-citizen, tho' a criminal, without a trial. Shall we therefore condemn the glorious action of Timoleon?

'Tis horridly criminal in ordinary caſes to tempt any man to perjury, or breach of faith. But how generally do we juſtify the corrupting the ſecretaries, or confeſſors, of hoſtile princes to betray the ſecrets of their maſters, when the ſafety of our country requires it; or when we can by ſuch means prevent much effuſion of innocent blood?

VI. 'Tis ſurprizing upon what principles ſome divines have denied all theſe extraordinary rights of neceſſity. *The reaſons on the contrary ſide.* " The common rules or laws of nature, ſay " they, ſhould always be obſerved, whatever evil may

BOOK II. " enſue: nor can the higheſt proſpects of advantage
" juſtify our departing from them in our conduct."
They argue as if certain propoſitions had been ingraved by God on ſome pillars, telling us what we are to do in all poſſible caſes, with ſtrict prohibitions of deviating from them in any caſe, unleſs where God, by ſome verbal propoſitions, had made exceptions; and ordering us to commit the event to God without reaſoning about it, while we keep to the letter of the law. Nay ſome tell us that " we know not all the remote
" effects of actions: ſuch as appear to us of good ten-
" dency may in the whole have pernicious effects; and
" thoſe may have good effects in the whole which ap-
" pear to us of the moſt hurtful tendency."

Theſe examined. But they ſhould either ſhew us theſe verbal propoſitions thus revealed; or if they cannot, they ſhould conſider how we come to know theſe ordinary rules or laws of nature. 'Tis no other way but by the feelings of our hearts and judging about the tendencies of actions. If our incapacity of judging about the diſtant effects of actions ſhould preclude all pleas of neceſſity; it will alſo preclude all our ordinary reaſonings about the tendency of actions, by which we diſcover the ordinary laws. We ſhould not take upon us, antecedently to revelation, to form any concluſions as laws of nature; but follow every particular affection or kind paſſion, which we naturally approve, ſuch as pity, gratitude, friendſhip, at all hazards; without conſidering its diſtant effects, about which, they argue, we are not competent judges. The truth is, we muſt

follow ſuch probabilities as the conſtitution of our nature and our cloſeſt attention can ſuggeſt to us, both in ſettling the ordinary rules of life, and in determining the exceptions in ſome rarer caſes. For 'tis only by our reaſonings about the tendencies of actions, and theſe ſometimes pretty remote, that we arrive at theſe concluſions which we call the ordinary laws of nature. CHAP. 17.

VII. Revelation cannot exclude theſe pleas of neceſſity, as we have no collection of preciſe rules with orders always to adhere to them contrary to all appearances of publick intereſt. Its precepts, except a few which relate to poſitive inſtitutions, and ſome points not knowable by the light of nature, preſuppoſe the law of nature, and the rights and duties of men to be known, or to be diſcoverable by other means, with all the limitations and exceptions. The origin, nature, and extent of the ſeveral rights are not explained in revelation; nor does it tell us when ſuch a right or duty takes place of another. It preſents the warmeſt recommendations, and the ſtrongeſt motives to the ſeveral virtues, and the moſt powerful dehortations from vice: but the ſeveral virtues and vices are only denoted in general by their common names, preſuppoſed to be previouſly known in their true nature and extent.

Theſe pleas not excluded by revelation.

The caſe is plainly thus. Our reaſon ſhews what actions tend to the publick good; theſe we judge lawful; and when they flow from the kind affections of the ſoul we approve them and call them virtues, by certain ſettled honourable names. Contrary actions,

Revelation preſuppoſes the law of nature as known.

BOOK II. or ſome of the ſame general claſs with the former, but in different circumſtances, tend to the publick detriment, and ſhew a bad temper in the agent; we diſapprove them, and give them the odious names of vices. 'Tis the proper office of that reaſon God has given us, to obſerve theſe tendencies of our diſpoſitions and actions, and to reduce them to their proper claſſes. Thus we can ſettle the meaning and the extent of theſe terms, *juſtice, mercy, charity, liberality, temperance, fortitude, ſuccour, ſelf-defence, execution of juſtice on criminals, defence of our country in war.* Theſe are names of virtuous or innocent diſpoſitions and actions. *Cheats, frauds, avarice, cruelty, drunkenneſs, gluttony, cowardice, treachery, robbery, ſtealing, murder,* are well known names of vicious diſpoſitions or actions. The Scripture preſuppoſes theſe names as known or knowable in their juſt extent and meaning; and by the ſtrongeſt motives exhorts to all the virtues, and deters from all vices, without deſcending to any explications of them in their extent and reſtrictions, which are otherways diſcoverable.

Without it, would be uſeleſs.

Abſtract from this previous knowledge by reaſon and reflection, the Scripture-precepts would be of no uſe to us, as they are of none to idiots. *Thou ſhalt not kill.* All killing is not prohibited, 'tis only *murder.* Now where is the Scripture-definition of *murder?* 'Tis our reaſon muſt ſhew what is the lawful, and what the unlawful killing; the lawful, is in ſelf-defence, in juſt war, in the execution of criminals: and the ſame reaſon will ſhew ſome extraordinary caſes

wherein it may be juſt, for the defence or recovery of all the valuable rights or liberties of a nation. *Thou ſhalt not ſteal* is another precept. It does not prohibit all taking either by violence, or ſecret means, what was ſometime poſſeſſed by another; 'tis only taking away what another has a right or property in. 'Tis our reaſon again muſt teach us the origin, the nature, and extent of property; and it will ſhew us too that property muſt often give place to ſome great publick intereſts. *Lye not to each other,* is another precept. But what is a lye? how defined? 'Tis not every ſpeech which the ſpeaker foreſees will lead the hearer into a falſe opinion; not every ſentence which is falſe in its moſt obvious meaning. Our Saviour often ſpake in this manner. 'Tis our reaſon again that muſt ſhew us what ſort of ſpeech hurts ſociety and what not; and when it is that ſome extraordinary caſes may juſtify receding from the common rule. Without having previouſly fixed the notion of theſe duties, and their proper limits, the above-mentioned precepts amount to no more than theſe vague undetermined ſentences, "Take not away the life of another when you ſhould "not take it away. Take nothing out of the poſſeſſi-"on of another, when he ſhould ſtill poſſeſs it, or has "a right to it. Do not deceive by ſpeech when it is "wrong to deceive." What are theſe precepts, without the aid of moral reaſonings? CHAP. 17.

Revelation was given to rational agents previouſly made capable of knowing the rights of men, and the tendencies of actions to the good or hurt of their fel-

BOOK II. lows, or of ſociety, and determined to approve what was beneficent, and to condemn the contrary. It was enough, as to our ſocial duties, that every thing virtuous and kind ſhould be enforced in general by revelation with the ſtrongeſt motives, and with the divine authority; and ſome ſuch ſpecial laws given, the uſe of which to a ſocial life the common reaſon of honeſt men would not ſoon have diſcovered. * It was not proper that our ſloth in cultivating the powers God had given us ſhould be incouraged by a revelation, or that we ſhould be treated as children or idiots, who could diſcover nothing by themſelves.

A vague maxim examined.

Theſe pleas of neceſſity ſome would exclude by a maxim of late received, *We muſt not do evil that good may come of it.* The author of this maxim is not well known. It ſeems, by a paſſage in St. Paul, that Chriſtians were reviled as teaching that ſince the mercy and veracity of God were diſplayed by the obſtinate wickedneſs of the Jews, they ſhould continue in ſin that this good might enſue from it. He rejects the imputation upon his doctrine, and hence ſome take up the contradictory propoſition as a general maxim of great importance in morality. Perhaps it has been a maxim among St. Paul's enemies, ſince they upbraid him with counteracting it. Be the author who they pleaſe; the ſentence is of no uſe in morals, as it is quite vague and undetermined. Muſt one do nothing for a good purpoſe, which would have been evil without this refe-

* The enemies of revelation have triumphed fooliſhly on this ſubject; and ſome of its friends have defended it injudiciouſly, by aſcribing to it what is not its buſineſs.

rence? 'Tis evil to hazard life without a view to ſome good; but when 'tis neceſſary for a publick intereſt, 'tis very lovely and honourable. 'Tis criminal to expoſe a good man to danger for nothing; but 'tis juſt even to force him into the greateſt dangers for his country. 'Tis criminal to occaſion any pains to innocent perſons without a view to ſome good: but for reſtoring of health we reward chirurgeons for ſcarifyings, burnings, and amputations. But, ſay they, "ſuch "actions done for theſe ends are not evil. The ma-"xim only determines that we muſt not do for a good "end ſuch actions as are evil even when done for a "good end." But this propoſition is identick and uſeleſs, for who will tell us next, what theſe actions ſometimes evil are which may be done for a good end? and what actions are ſo evil, that they muſt not be done even for a good end? The maxim will not anſwer this queſtion; and truly it amounts only to this trifle; "you ought not for any good end to do what "is evil, or what you ought not to do, even for a "good end."

The difficulties about the extent of this plea.

VIII. The main difficulty is how far can this plea be extended? It cannot be refuſed in many ordinary laws about property and our common labours. Nay it may found exceptions to ſome of the general laws of nature about the preſervation of life. But what are theſe laws which admit of no ſuch exceptions? This is one of the *deſiderata* in morals, and muſt probably remain ſo till our knowledge grows more perfect in ſome higher ſtate.

BOOK II.

Many moraliſts allow ſpeaking againſt our ſentiments in ſome extraordinary caſes. What if a bare falſe aſſertion will not attain the end, ſuppoſe the preſervation of our country, may we employ perjury alſo? Men of any ſenſe of piety abhor perjury upon any pretence of the higheſt neceſſity. The ſtateſman allows it lawful to bribe the ſecretary of an hoſtile prince to violate his oath of fidelity by betraying his maſter's ſecrets; what if we cannot otherways ſave our country than by bribing him to poiſon or aſſaſſinate his maſter? Even the ſtateſman cannot defend this practice. A manifeſt tyrant or uſurper may be cut off by any private man: here killing is no murder. But may he accompliſh this deſign by oaths of fidelity, by all profeſſions of friendſhip, by the dark arts of poiſon amidſt the unſuſpicious pleaſantries and friendſhip of an hoſpitable table? This muſt ſhock the greateſt lovers of liberty. We may deceive a dangerous enemy by falſe narration, ſay many; may we not, when the ſafety of our country abſolutely requires it, deceive alſo by a treaty, or truce? The laws or cuſtoms of all civilized nations deny it.

It may be impoſſible to determine preciſely how far we may extend this plea in all the poſſible caſes. Men no doubt may often miſtake, and upon ſmaller neceſſities may violate laws too ſacred to admit exceptions in ſuch caſes. But this does not prove that the plea is never juſt. Men often make like miſtakes about the rights of violent defence and proſecution, and that of puniſhing criminals: but we do not thence deny

theſe rights altogether. There is no fixing minutely the degrees of force requiſite in defence, or the degrees of pain to be inflicted on criminals. 'Tis ſtill an uſeful rule for health to live temperately and uſe exerciſe; and yet no man can determine to an ounce, the quantity of food he ſhould take, or to a perch, the length of the road he ſhould walk or ride for his health. Nay ſome deviations from this regularity are ſometimes conſiſtent with health, or may even improve it.

Allowing ſome ſuch pleas does not deſtroy all confidence in men.

If one departs from the ordinary law for trifling cauſes, abuſing this plea of neceſſity, his own heart muſt condemn him upon reflection, and all men diſtruſt his integrity. This plainly ſhews that the evils to be declined, or the advantages in view, muſt be very great, in proportion to the importance of the law, which can found any exception to it. But when one departs from the ordinary law only in great and manifeſt exigences, and is known to adhere religiouſly to the law in all ordinary caſes, even contrary to ſome conſiderable intereſts of his own, men will have as full confidence and truſt in his integrity in all the ordinary affairs of life, as in thoſe who have ſtricter tenets in theory. A man of the ſtricteſt tenets in opinion, unleſs he is alſo known to adhere religiouſly to them in practice, may incur this ſuſpicion that he will counteract them upon any great temptation: and if he who allows the plea of neceſſity in caſes of ſingular importance, ſhews a ſtrict regard to the ordinary law by his practice in all ordinary caſes, even when at-

BOOK II. tended with many private inconveniences to himself, he will obtain the confidence of mankind notwithstanding this tenet. We know that men of sincere virtue will be cautious of abusing this plea for any little private advantages; and we can trust their candour in this matter. And men of little virtue will counteract the strictest tenets upon any prospects of advantage. So that we do not confide in men according to the strictness of their opinions, but according to our experience of their honesty.

The allowing some pleas of necessity does not shake loose all morality, as some have alledged. All agree that that conduct is right which tends to the greatest good. 'Tis also agreed what conduct tends to the general good in all ordinary cases; and thus the several laws of nature are undisputed. In some rarer cases, 'tis also generally allowed there are some just exceptions, in which receding from the common laws will do more good than adhering to them. There are some more sacred laws, from which, we doubt if any necessity can justify our departing. This uncertainty does not make the other points uncertain. Geometry is not made uncertain, because the learned know not how to square a circle geometrically. The rules of medicine are not all uncertain, because some singular diseases occur for which there is no cure. Nor is navigation a vain art, because we cannot find out the longitude with that accuracy we desire.

General remarks to prevent abuses.

IX. Take the following remarks to prevent abuses of this plea. 1. The more virtuous any man is, and the

higher his ſenſe is of all moral excellence, the leſs apt he will be to abuſe this plea in matters of too ſmall importance, or for any intereſt of his own. In ſuch men there are not only the more extenſive affections to mankind, or to large ſocieties, but all the tender ſocial feelings and affections of the heart of a narrower kind, and theſe alſo are objects of their inward approbation. They have a juſt reliſh of all virtuous affection and action; of compaſſion, mercy, gratitude, veracity, friendſhip, and cannot counteract them without great reluctance. From theſe feelings they will be ſufficiently cautioned and reſtrained from uſing any contrary pleas, unleſs ſome intereſt of the greateſt and moſt extenſive kind rouſe the more extenſive affections to controll the narrower, by their ſuperior beauty and dignity.

2. In computing the advantages and diſadvantages of receding from any ordinary rule, we muſt conſider not only the immediate effects, but even the moſt remote, of allowing this liberty in all like caſes; and even the dangers from the miſtakes of others in uſing the like plea in unlike caſes. Not that every practice, or tenet in morals, is wrong or dangerous which men may readily imitate, or miſapply, in improper and unlike caſes. This may be the fate of the very beſt actions, and tenets. But a good man, as he weighs all the advantages expected from an unuſual ſtep, muſt alſo weigh all the diſadvantages probably to enſue even by the miſtakes of others, eſpecially of ſuch as have ſome ſenſe of virtue: and he will decline to take

BOOK II. not only ſuch liberties as would be pernicious to the publick if all men took them in like caſes, but alſo ſuch as would have the like bad effects by the miſapplication of others in unlike caſes, unleſs the advantages expected from them overballance even theſe evils enſuing upon the miſapplication of them by others. Men often abuſe the doctrines of violent defence and proſecution. A good man would decline practiſing according to them, were not the advantages enſuing from the uſe of theſe rights, and the evils prevented by it, ſo great as to overballance the evils ariſing from the abuſes of theſe doctrines in common life. When the plea of neceſſity is only allowed in caſes of very great importance, there is little danger that men of virtue will frequently miſapply them. And the groſs miſapplications by vicious men are not to be computed; as the ſame effects had happened tho' this tenet had never been known. Such men would have acted the ſame part under temptation, tho' they had held the ſtricteſt opinions, and had no ſuch unfair pretext of neceſſity.

3. The more important any law is for the internal or external happineſs of mankind, the greater muſt that utility or neceſſity be which in any ſingular caſes can juſtify an exception from it.

4. A publick advantage in view, or the prevention of ſome publick evil, is a more favourable plea than any private advantage of the agent. It ſhews a noble diſpoſition to adhere to the ordinary rules under private loſſes, or in oppoſition to private intereſts, even

when receding from the rule could ſcarcely have been reputed criminal. But where a publick intereſt is at ſtake, and founds a juſt exception, a good man is not at liberty to ſacrifice it to any falſe notions of his own honour or character. He muſt be deficient in his extenſive affections, or miſtaken in his moral notions, if he follows in ſuch caſes ſome lower ſpecies of goodneſs in oppoſition to the publick intereſt. CHAP. 17.

5. Tho' in caſes of neceſſity men may intermit external worſhip at the uſual times, yet no neceſſity can juſtify ſuch actions as evidence impiety, or contempt of the Deity; ſuch as blaſphemy, perjury, or abjuring the true God, or that worſhip we believe acceptable to him; or † the omitting any duty he has ſpecially enjoined upon us at all hazards; or the doing, or omitting, any thing required as a ſymbol of our renouncing our duty to him.

6. As the foundation of all juſt pleas of neceſſity is ſome great publick intereſt requiring our departing from the common rule, no neceſſity preſſing me can juſtify my voluntarily occaſioning as great evils to an equally innocent man; as the publick reaps no advantage by ſuch conduct. But the publick intereſt is really promoted, when an innocent man ſaves himſelf from ſome great evil by ſome ſmall damage done to another. In like manner; no ſociety or ſtate can be juſtified by theſe pleas in occaſioning equal evils to another without any demerit. In theſe caſes indeed the pro-

† Thus the apoſtles or primitive martyrs could not plead neceſſity, had they omitted the publiſhing the goſpel for fear of perſecution.

BOOK II. babilities on both ſides muſt be computed, both as to the impending evils, and the future compenſations to be obtained. To avoid a very certain evil on one ſide, it may ſometimes be lawful to do what may poſſibly occaſion an equal evil to another, when there is little probability that the other ſhall ſuffer at all by it. But all ſuch damages done to others for our preſervation from greater, oblige us to make full compenſation when we are able. The great probability or certainty of our making future compenſation juſtifies many ſteps which otherways would have been unwarrantable.

The ſenſe of a good and wiſe man muſt be the laſt reſort.

But after all we can ſuggeſt on this head, unleſs ſomething more preciſe and accurate be diſcovered, we muſt have recourſe to the inward feelings of an honeſt heart. A ſenſe, which Ariſtotle often tells us, muſt make the application of general principles to particular caſes; and thus the truly good man, and his ſentiments, muſt be the laſt reſort in ſome of theſe intricate caſes. Men truly virtuous will ſeldom be in danger of abuſing theſe pleas. And no rules or rigid tenets and opinions will bind the unjuſt, the covetous, the ambitious, or ſelfiſh, or bigots in falſe religions. If they allow the pleas of neceſſity in important caſes, they will miſapply them. If they do not allow them in opinion, they will counteract in practice thoſe very laws which they deem ſtrictly univerſal without any exceptions.

CHAP. XVIII.

How CONTRAVERSIES *ſhould be decided in* NATURAL LIBERTY.

BEFORE we paſs to the duties of the adventitious ſtates, we may conſider how contraverſies ſhould be decided, and peace maintained, in natural liberty, when men diſagree about the point of right; and this will ſhew the main uſe of civil polity, and the firſt ſtep toward it.

The great uſe of arbitrations.

'Tis well known that ſelf-intereſt often byaſſes the judgment even of good men, whoſe fixed purpoſe it is to obſerve all rules of juſtice and humanity, and to abſtain from all known injuries; and violent paſſions have often the ſame effect. Thus men, in the main good, may be diſpoſed, from different opinions of right, to do what is injurious to each other; nor are they capable, when their paſſions are once kindled, of receiving conviction from thoſe againſt whom they are provoked: they grow mutually ſuſpicious, and are unfit monitors to each other. When therefore no friendly conferences of theirs can make them agree, the next natural recourſe is to one or more *arbitrators*; perſons of whoſe wiſdom and integrity both ſides are ſatisfied, and who have no peculiar intereſt in the ſucceſs of either ſide, nor are attached to either by any very ſtrong tyes. Such men, tho' but of equal prudence with that of the contending parties, will more

BOOK II. eaſily diſcern what is juſt and equitable between them; and therefore all good men in natural liberty, nay in civil polity too, ſhould be ever ready to take this eaſy expeditious method of obtaining juſtice in any debated point. And all good men, when they are diſengaged from more urgent affairs, ſhould be ready to do this good office, in promoting peace and juſtice as arbitrators, when they are invited by the parties.

Two ſorts of arbitrators.

II. Two ſorts of debates may ariſe: one about the *ſtrict point of right*, where neither party profeſſes to ſhew any liberality or gratuitous favour, nor claims it; but each inſiſting on their perfect or external rights, and embarraſſed by ſome intricacies, want the aſſiſtance of wiſe impartial men. The other ſort is, where the parties wave their external rights, and are willing to act the humane and equitable part as far as their affairs can allow; and leave this to be determined by arbitrators. In caſes of this latter ſort, arbitrators will find much leſs difficulty: but in both 'tis neceſſary that they know the perfect rights and claims of both ſides, and all exceptions againſt them; that in the former ſort they may fix the perfect or external right; and that in the latter they may diſcern what equitable indulgence or abatement is to be made to either party. In the debates of ſtrict right they are much more confined in their determinations, and obliged to inſiſt on ſtricter proof; ſince a defect of full proof may reaſonably defeat a claim not founded in humanity and equity. But in the other ſort of ſubmiſſions, the arbitrators have full room to conſider every equitable

circumſtance, and every reaſon of humanity. A truly good man who confides in the integrity of the arbitrators will ever agree to ſubmiſſions of this equitable ſort.

The compromiſe ſhould be abſolute.

The ſubmiſſion of the parties ſhould always be abſolute as to the matters ſubmitted. A man is not obliged to ſubmit all his rights, even ſuch againſt which there is no ſhew of a claim. But over ſuch as he ſubmits he ſhould give full power to the arbitrators. A compromiſe of this kind, that "the parties ſhall ſtand "to the award provided it be juſt," anſwers little purpoſe; as the parties reſerve to themſelves to judge of the juſtice of the award, the matter remains as before, only that they know the opinion of unbyaſſed men about it, which modeſt men may ſometimes regard. But to end a debate effectually, the compromiſe ſhould be abſolute as to all matter ſubmitted. And yet after the moſt abſolute ſubmiſſion, either party may juſtly refuſe to acquieſce in the award, if either a fraudulent compact with the other be diſcovered, or any bribe received; or if the iniquity of the award be ſo groſs as of itſelf to be an evidence of corruption in the arbitrators to any honeſt obſerver. Theſe circumſtances may free one from the obligation of a compromiſe, as a caſe of neceſſity ſuperſedes the obligation of the ordinary rules of life.

Why one witneſs never ſufficient, and more than two not requiſite.

III. Arbitrators in their proceedings, when other proofs and documents fail, ſuch as the acknowledgments of the parties, deeds, or contracts ſigned by them, muſt have recourſe to witneſſes teſtifying upon

oath. The characters of witneſſes, and their diſintereſtedneſs in the preſent cauſe, muſt be obſerved by arbitrators as they are by civil judges. What is now received by almoſt all civilized nations about witneſſes muſt hold in natural liberty, that 'tis dangerous to truſt any point of importance to the teſtimony of one witneſs; and yet the credibility of teſtimony requires not great numbers. Two unexceptionable witneſſes can give ſufficient confirmation of any fact, when they ſhew ſuch ſagacity, and had ſuch opportunities of knowledge, that they could not be deceived themſelves; and when from their circumſtances we are well aſſured that they have no diſpoſition to deceive others. The knowledge of ſuch witneſſes as were invited to the tranſaction by the parties, or who were preſent during certain actions, may eaſily be aſcertained. Their fidelity or having no inclination to deceive muſt often be collected from many circumſtances, and chiefly this, that they can have no intereſt in deceiving, or no proſpect of ſucceſs in ſuch a deſign.

Now two witneſſes to the ſame fact may give very high ſecurity as to this laſt point. One man of ſagacity and preſence of mind may forge a ſtory ſo artfully and conſiſtently that no examination can detect him, or make him contradict himſelf. But when two witneſſes are ſeparately examined, and hear not each others teſtimony, about every circumſtance which would probably be obſerved by one preſent at any tranſaction, 'tis highly probable that ſome ſuch circumſtances will occur to the judge or arbitrator to queſtion

them about, which did not occur to the witneſſes in their forging any concerted falſhood. If the witneſſes anſwer ſeveral ſuch queſtions ſeparately about theſe circumſtances, there is a fair hazard that they will contradict each other in every one of them, and ſo detect their falſhood. If they both frequently declare that they are ignorant about many ſuch circumſtances, or both profeſs that they forgot the ſame circumſtances, they give great cauſe of ſuſpecting a forgery. But when upon the moſt minute ſeparate examination of them about all theſe circumſtances their teſtimonies wholly agree, or are perfectly conſiſtent, there ariſes a very high evidence. The addition of one or two more witneſſes could give little more credibility to the fact. Nor do human courts ordinarily require more: it is certainly a right maxim not to judge upon ſmaller evidence where greater is provided or attainable; and yet it might be a great burthen upon the parties to be obliged to produce many witneſſes. They therefore require, except in ſome ſpecified caſes, only two as neceſſary to found their judgment, nor require that more ſhould be called by the parties as witneſſes in their tranſactions. The teſtimony of one man of veracity may make any matter highly credible to thoſe who know his character, and yet to admit this as full proof would be a dangerous rule, conſidering how often men who have long obtained a fair character have at laſt been diſcovered to have no ſteddy integrity. And if the ſingle teſtimony of one is admitted in one caſe, it cannot be refuſed in others,

BOOK II. without proof made of ſomething very infamous in the witneſs whoſe teſtimony is refuſed. And frequently ſuch proof cannot be found againſt men of very little worth or integrity.

The laſt reſort in natural liberty, is force.

IV. When neither the conferences of the parties, or the interpoſal of common friends can end the debate, or perſuade both to a ſubmiſſion to arbitrators, there remains, in natural liberty, no other method of redreſſing wrongs but by violence. As this is always attended with dangers, and may have moſt pernicious conſequences; all other means of obtaining juſtice, where the nature of the caſe will admit, ſhould firſt be tryed. When theſe prove ineffectual, one ſhould not only procure the aſſiſtance of his friends, or ſuch whom indignation at the wrong done may rouſe to his aid, but he ſhould conſult the calmeſt and wiſeſt of his neighbours, not under any ſpecial attachment to himſelf, as to the methods of defence, or proſecution of his right, or the puniſhment to be inflicted on the invader of it for the deterring of others from like attempts; that thus all unneceſſary ſeverity may be prevented, and no more demanded or inflicted than is juſtly due to the injured, or requiſite for the general ſafety.

The danger of violent defence and proſecution ſhews the neceſſity of civil polity.

The dangerous conſequences to be apprehended from the immoderate paſſions of men in the defence and proſecution of their rights by violence in natural liberty, where the unjuſt will rouſe all their forces, and ingage all their friends to their aſſiſtance in ſupport of their injuries, as well as thoſe who have

the juſt cauſe, have probably been among the firſt motives which excited men to contrive civil government, and arm magiſtrates and judges with ſufficient power to enforce all their ſentences about the controverſies of the ſubjects, and to inflict proper puniſhments upon the injurious, to deter them and all others from like attempts for the future *. Of this we treat in the next book.

* As ſome rules of interpretation may be of uſe in determining the true intent and meaning of contracts, as well as of laws, many authors on moral philoſophy ſubjoin ſome diſſertations on that ſubject. But as there are no rules of interpretation peculiar to contracts, or laws, which do not hold equally about any other ſorts of ſpeech or writing, it ſeems better to leave them entirely to the art of criticiſm, which may have laws and contracts as a part of its object. Nor can much be ſuggeſted on theſe matters which would not of itſelf occur to any man of ſound underſtanding who knew the language and cuſtoms of the country where the laws or contracts are made, and the common principles of criticiſm.

THE END OF THE SECOND BOOK.

BOOK III.

OF CIVIL POLITY.

CHAP. I.

Concerning the ADVENTITIOUS STATES *or permanent Relations: and first* MARRIAGE.

Duties in adventitious states.

I. THE rights and duties founded in nature previous to any adventitious states or lasting relations introduced by some institution, contract, or deed of men, were considered in the former book. The most part of these rights and duties must still remain in all adventitious states; but they are so limited as the nature of the new relations may require for the publick good; and many new obligations are constituted by our entring into these relations. We proceed to consider the principal of these adventitious states, and the special rights and duties arising from them.

These domestick or civil.

These states and relations are either *domestick* or civil. The domestick are these three, of *married persons*, of *parents and children*, of *masters and servants*. The civil or political relations are either the general one of all citizens or subjects toward the state, and its governors; or the more special relations of men in certain political offices.

BOOK III. II. The first relation in order of nature is marriage.

The necessity of a marriage contract.

The several tribes of animals must soon have been extinct if nature had not providently implanted in them all the instinct and power of propagation. The nature of the several instincts in brutes is various, according to their several circumstances. As in most species their young need but little care of their parents for their preservation, and that of but short continuance, and but little instruction for the simple purposes of their lives, both which the dams can sufficiently afford them, little more was requisite than the mere instincts to propagate and to provide proper food, and nests or dens for their young where it was requisite, till they attained sufficient strength to support themselves. In some few species we discern something more, a sort of partnership of the two parent-animals, with some appearances of a lasting affection and fidelity. But the preservation of human offspring, and the giving it the education necessary for the higher purposes of a rational life, require a long, a constant, and troublesome attendance of many years, for which the mother without the aid of the father is not at all sufficient: (we speak of the general condition of mankind, to which the natural instincts must be accommodated, and not of the state of a few artificially raised to higher wealth:) and on the proper education of offspring the happiness of mankind exceedingly depends. No part of nature displays the goodness and wisdom of its author more fully, than the contrivance of the several instincts and passions in mankind subservient to this

grand purpoſe. A careful attention to the frame of our nature in this reſpect, will clearly ſhew our duties in this relation of marriage. CHAP. I.

From natural diſpoſitions.

We have all attained to the knowledge of what is intended by nature in this inſtinct of propagation, before thoſe years in which it ariſes: and a natural modeſty or ſhame generally reſtrains us from gratifying it for ſome time further. We muſt alſo have obſerved that a long ſeries of careful and troubleſome attendance is abſolutely neceſſary for preſerving and educating the offspring; and that for this purpoſe nature has implanted that tendereſt and moſt laſting parental affection in both parents, as their joint aſſiſtance is highly neceſſary. As this affection ſweetens this labour to both, ſo it ſhews the ſtrong obligation upon both to bear it. And thus all ſuch as regard the voice of nature, and the obligation it impoſes, or have any ſenſe of humanity and virtue, muſt ſee that, if they gratify this inclination to procreate offspring, they muſt, both by ſenſe of duty and by a ſtrong affection toward the ſame objects, be united in intention, and in a long courſe of labour and common care with the partner they chuſe for procreation. This joint counſel, care, and labour, can ſcarce be tolerable without a mutual affection and eſteem between the parents; and to create this, we find that nature has wiſely formed us in ſuch a manner, that in all thoſe who are under the reſtraints of the natural modeſty, and of any ſenſe of virtue, the inclination to procreate is excited, or at leaſt generally regulated in its choice of a partner, by many delicate

BOOK III. ſentiments, and finer paſſions of the heart of the ſweeteſt kind. The ſenſe of beauty prepoſſeſſes in favour of a moral character, or acquaintance gives better aſſurance of it. The eſteem of virtue and wiſdom, the deſire and love of innocence of manners, complacence, confidence, and the tendereſt good-will, are the natural incitements and concomitants of the amorous deſire; and almoſt obſcure the brutal impulſe toward the ſenſual gratification, which might be had with perſons of any character. As we thus previouſly know the natural deſign of this impulſe, and the obligations toward offſpring thence to enſue, as we are endued with reaſon, we are obliged to reſtrain this impulſe till we have obtained aſſurance of ſuch harmony of minds as will make the long joint charge of education tolerable to both parents, and till we are in circumſtances capable of ſupporting ſuch offſpring as may ariſe. For the intimacy contracted in this joint laſting charge, and the recurring impulſes to procreation, may naturally produce a numerous offſpring: and we may eaſily foreſee that the rearing and educating ſuch offſpring muſt fully require the conſtant joint attention of both parents: nay, that, where there has not been ſome wretched corruption of heart, deſtroying the parental affection, all their joint cares come far ſhort of their affectionate and ardent wiſhes for their children: theſe inſtincts and ſtrong natural affections, along with the laſting infirmity and dependent ſtate of human offſpring, plainly declare the intention of nature, that they ſhould be propagated by parents firſt united in

mutual love and eſteem, in an affectionate and laſting partnerſhip, to aſſiſt each other in this moſt important duty toward our kind, of producing, rearing, and educating the riſing generation. CHAP. I.

Theſe point out all our duties in this ſtate.

This moral machinery of theſe inſtincts we find has appeared in all ages and nations, and generally prevailed; tho', no doubt, vicious cuſtoms and habits can often weaken or almoſt extinguiſh many natural diſpoſitions in ſome individuals. It will plainly ſhew us almoſt all our obligations as to marriage and offspring, all the reaſonable terms which ſhould be ſtipulated in the marriage-contract, and the happy effects upon ſociety, from following the intention of nature, and the miſchiefs naturally enſuing from counteracting it, will further confirm our obligations.

An unlimited indulgence pernicious.

III. And firſt, indulging the brutal impulſe without entring into any ſocial or friendly bond, without any regard to theſe tender and generous paſſions which naturally accompany this deſire, beſide its counteracting this beautiful contrivance of nature, muſt have many pernicious effects upon our bodies, our minds, and human ſociety. To follow the brutal impulſe, in oppoſition to the natural reſtraints of modeſty, as early and as frequently as it appeared, would be pernicious to the bodies of the parents, as well as thoſe of their poſterity; eſpecially among ſuch as are in more eaſy circumſtances, and freed from conſtant bodily labour. The weakneſs of mind, and the diſſolute habit, would ſtill be worſe effects. Nature indulgent in this matter to mankind, has made them capable of more frequent

BOOK III. gratifications than moſt other animals, as a compenſation for the ſuperior toils of educating their offſpring. But by a ſenſe of ſhame, and the many moral paſſions naturally attending this inſtinct, as well as by our reaſon which can diſcern the diſtant effects, and the obligations we are under, nature has pointed out the method of gratification which is conſiſtent with all the moral ſentiments of the heart, with all the concomitant generous paſſions, and with the intereſt of ſociety.

Deſtroying parental affection.

Again, unlimited indulgences in promiſcuous fornication would have this effect, that the fathers would generally be uncertain about their own offspring, and have no other incitement to any cares about them than the general tye of humanity, which we know is not ſufficient. They muſt want one of the moſt natural ſatisfactions in the knowledge and love of their offſpring, and one of the chief incitements to labour and induſtry. The mothers, upon whom the whole burthen of education would be caſt, muſt find it intolerable. They would grow negligent, and give themſelves up to brutal indulgences as well as the fathers. The natural purpoſe of this inſtinct would thus be in a great meaſure defeated, partly by the barrenneſs of women, and partly by their neglect of their offſpring. The miſchiefs of a diſſolute ſtate, where all followed the brutal inſtinct without reſtraint, are but very imperfectly repreſented to us by the evil effects we ſee enſuing upon a few irregular indulgences, in a nation where the generality are under the wiſe re-

ſtraints of laws, and of modeſty confirmed by education. And yet 'tis eaſy from them to diſcern what general miſery muſt enſue, if all reſtraints were removed, and if all gratified the brutal impulſe without any controul.

Monſtrous luſts pernicious to ſociety.

Many inſtincts of the moſt uſeful ſort may be monſtrouſly perverted, and this one among others; either by being turned toward a different ſpecies, or the ſame ſex. Theſe indignities to the wiſe and venerable conſtitution of our nature, and to God its author, muſt evidence a brutal ſtupidity, and an inſenſibility of what becomes rational beings conſtituted in ſuch a ſyſtem by a wiſe Providence. The horrid evils to be apprehended from ſuch perverſions, if they frequently prevailed, are obvious; tho' the effects of a few rare inſtances, in a nation generally educated with an abhorrence of ſuch luſts, be not conſiderable. Were the reſtraints of laws removed, and multitudes depraved by bad example, ſatisfying the worſe than brutal inclination, without involving themſelves in the toilſome education of offſpring, monſtrous and unnatural paſſions would ariſe, (as we ſee both by ſome hiſtorians and poets hath happened) which nations unacquainted with ſuch vices can ſcarce well imagine. Were theſe paſſions frequent, a country would ſoon ceaſe to be populous; and be infeſted with wretches as abject and depraved in the other faculties and reliſhes of the ſoul, as they are in this appetite. Such monſtrous luſts are therefore to be ſeverely reſtrained in every ſociety.

BOOK III.

The obligation to marriage.

IV. As from the preceding obſervations it appears that mankind ought to be propagated by parents united in a friendly partnerſhip for their education; we proceed to conſider the reaſonable terms of this partnerſhip or contract; ſince 'tis plain there is a general duty incumbent on all with reſpect to our kind, which alſo is ſtrongly recommended by our natural deſires, that each one ſhould contribute his part toward the continuance and good education of our race, unleſs he is ingaged in ſuch important ſervices to the publick as are inconſiſtent with domeſtick cares, or in ſuch circumſtances that he cannot ſupport a family. And without ſuch juſt excuſes it muſt be unnatural ſelfiſhneſs to decline our part of this neceſſary trouble.

The articles of the contract.

1. Fidelity of the wives.

1. The firſt and moſt neceſſary article is that the fathers ſhould have their offſpring aſcertained, and therefore the woman who profeſſes to bear children to any man muſt give the ſtrongeſt aſſurances that ſhe will not at the ſame time cohabit with other men. The violation of this engagement is the greateſt wrong imaginable, as it robs men of what is deareſt to them, and the end of all their worldly cares, a certain offſpring. In the marriage-contract therefore this is the firſt article.

Neceſſity of modeſty in both ſexes.

'Tis neceſſary that women from their childhood ſhould be ſo educated as ſhall beſt prevent ſuch diſtreſſing injuries. 'Tis well known that their fornication before marriage, beſide the diſſolute habit it may occaſion, founds ſuch an intimacy with theſe perſons they have gratified, and ſubjects their characters ſo

much to them, and cauſes ſuch proneneſs to future indulgences, or takes away their power of reſiſting their ſolicitations, that one is not well ſecured in having his own genuine poſterity by marrying women of ſuch conduct. When ſuch previous indulgences are diſcovered, their character for chaſtity is loſt; nor will men confide in their fidelity after marriage. Thus they are made deſpicable, excluded from hopes of obtaining any conjugal eſteem and affection, and from all reputable condition in life. The guilt therefore of fornication on the part of the man muſt alſo be very great, as he for a mean ſenſual gratification expoſes his fellow-creature to a ſtate of infamy, ruins the natural modeſty and ingenuity of her mind, and makes her unworthy of that conjugal love and confidence upon which the greateſt ſatisfaction of her life depends, nor can ſhe obtain it but by falſhood and diſſimulation, in which ſhe cannot be aſſured of ſucceſs. CHAP. I.

The injury done by lewdneſs.

We are all ſenſible how grievous this injury is, whether done by violence or fraudulent ſolicitations, to a ſiſter or child of our own; the guilt is equal when others ſuffer by it. It muſt therefore be incumbent on all who have the charge of educating the young of either ſex, to habituate them as much as poſſible to all modeſty in ſpeech and action, and reſtrain every contrary appearance. 'Tis a ſtrange corruption of manners and ſentiments in any nation which boaſts of maintaining liberty and equality in rights to all their people, that ſuch cruel injuries to any, even of the loweſt condition ſhould eſcape without ſevere puniſhment. The

BOOK III. loweſt orders of men feel the joys of conjugal love and of a certain offſpring; they have the ſame natural deſires and ſenſes with the higheſt. The crime therefore of depriving any of them of theſe ſatisfactions, and of a decent condition in life, and that for gratifying a mean appetite, muſt be greater than many of thoſe which ſubject to capital puniſhments. 'Tis ſtrange that the party leſs criminal ſhould generally ſuffer ſo much, and no puniſhment abide the chief criminal, the ſeducer, and that by the baſeſt arts of falſhood and perjury!

Where more diſſolute manners prevail, this infamy may be leſs felt by the women. Some abject creatures, whoſe luſt has obliterated all modeſty, and ſuppreſſed all the finer ſentiments and paſſions naturally accompanying the amorous impulſe, may chuſe a diſſolute courſe of life for its mean pleaſures and gains. But, where-ever there is any regard to moral virtue, ſuch courſes ſhould be ſeverely reſtrained: as thoſe who follow them always prey upon the weakneſs of youth, corrupt their manners every way, and create the moſt ungovernable habits inconſiſtent with all valuable buſineſs in life; and pervert the wiſe contrivance of nature in our inſtincts from their natural purpoſes.

1. *Like fidelity of husbands.*

V. The ſecond eſſential article in the marriage-contract, is that the husband ſhould confine himſelf to one wife. 'Tis true the injury by the husband's infidelity is not ſo great as that by the wife's; he cannot deceive her by impoſing on her a ſpurious brood. But in all other reſpects the moral turpitude is the

ſame, and there are the ſame juſt reaſons why a wife ſhould demand this engagement from the husband. The natural paſſions of the woman as much require a friendly ſociety, and unity of intereſt in the joint-education of the common offspring as thoſe of the man.

The iniquity in the contrary practice

'Tis the plaineſt injuſtice and inequality in this partnerſhip, which all the finer ſentiments of the heart declare ſhould be an equal friendſhip, that a man and his offspring ſhould be the ſole objects of the woman's affections and tendereſt cares, and all her worldly ſolicitudes, while his affections and cares are allowed to be divided among other women and their children, and probably wholly alienated from her. Without ſecurity for the fidelity of the husband, all her ſatisfactions in a friendly ſociety, and the preſervation and ſupport of her and her offspring, muſt be very precarious. And thus by the luſts of the husband, leading them either to diſſolute enjoyments, or to ſimultaneous polygamy, for a mean ſenſual indulgence, one half of the ſpecies, which is equally intitled to all ſocial enjoyments and ſatisfactions with the other, is moſt injuriouſly deprived of many of the chief enjoyments of life. All the tender and generous paſſions attending the amorous inſtinct in men, declare againſt ſuch liberty; and point out to them that nature has deſigned the conjugal ſtate to be a conſtant reciprocal friendſhip of two; as theſe paſſions are founded on eſteem and love of virtue, and where they are heartily raiſed toward one, cannot admit of any like paſſions

BOOK III. toward others at the ſame time. The affections of the husband muſt be turned away from the former wife and her offſpring either by adultery or ſimultaneous polygamy; the later wife and her children will probably engroſs them altogether, and the former be juſtly deſpiſed.

The miſchiefs of polygamy.

The effects upon the riſing generation and upon ſociety will be pernicious even from polygamy, as well as from the diſſolute indulgences of husbands. The number of one man's children may be ſo great, that neither his care can ſuffice for their education, nor his ſtock or induſtry for their ſupport. Many muſt be neglected, and all the care employed on a few favourites. As providence declares againſt this polygamy by preſerving pretty nearly an equality in the numbers of the ſexes, nay rather a ſurplus of the males; by allowing polygamy, many men muſt be excluded from all enjoyments of marriage and offſpring; and thus diſengaged from the natural bonds with mankind, and their natural cares, turn abandoned to all unſociable diſpoſitions. Polygamy obſtructs rather than promotes the increaſe of mankind. A nation is made populous when all the women are kept bearing and nurſing of children while they are capable of it. This is done moſt effectually when every woman has her own husband. When one man has many wives, he will readily neglect the greater part of them, and decline being burthened by their having children. Women in this caſe too are under the ſtrongeſt temptations to violate the unequal and moſt oppreſſive engagement on their part; and to

take all opportunities of adultery. And hence we see in fact that where this practice * prevails, the women are every way treated as ſlaves: no friendly regards had to their ſatisfactions; chains, and priſons, and guards muſt confine them, and not the bonds of love or friendſhip. CHAP. I.

VI. As the joint charge of educating the common offspring requires that the marriage-contract ſhould be for a long duration, ſince women are fruitful for one third of life and more, and generally the education of their younger children may require the joint attention of the parents for many years after the mother ceaſes to bear children: this bond muſt be intolerable without a mutual friendſhip. Now there can be no real friendſhip in a partnerſhip merely entered into for propagation and the rearing of children, and that only for a certain term, and to expire with that term; or in one made dependent on contingencies or conditions not in the power of the parties. Both parties are allured into this contract, as into a ſociety of love, by the tendereſt ſentiments of mutual eſteem: the aim of all ſincere friendſhip is perpetuity. And there can be none in contracts only for a term of years, *The contract ſhould be perpetual.*

* 'Tis true, that in ſome civilized nations this polygamy has been allowed to the men; but this takes not away its iniquity. Some good men have practiſed it, and perhaps not attended ſufficiently to the guilt of it, blinded by cuſtom and their own paſſions. But in like manner good men in civilized nations have practiſed the ſlave-trade, or concurred in the cuſtom of making one half of their people ſlaves without any demerit. Nay ſome from a miſtaken piety or love of their country, finer principles by far than thoſe which excite to polygamy, have practiſed human ſacrifices, and even ſacrificed their own children. No man ſhould therefore conceive theſe practiſes juſt, even tho' people enured to them, or thoſe who even ſuffer by them, do not complain of them as in general unlawful.

BOOK III. or such as may be made void by accidents without any fault of the parties. The marriage-contract therefore must be for life, otherwise all true friendship and love must be banished, and that relation of marriage turned into a mere servile bargain for procreation and joint labour.

Divorces, without crimes, unreasonable.

Again, how cruel is it on either side to divorce a person full of the fondest affection, on account of a bodily infirmity? How much more barbarous to divorce upon the death of children a fond partner who suffers equally in that misfortune? There is seldom any loss to the publick by the perpetuity of the bond in these cases. If the husband could have children by another woman, that other woman may bear them to another man, for as good purpose to the publick. The view of increasing of mankind would plead more for allowing a divorce on account of any defect in the husband. But there is such barbarity in casting off a dear friend without any demerit, that while there is no danger of a defect of offspring in a state, the allowance of divorces for this reason is not justifiable.

Upon defect of offspring, either by barrenness or the death of children, some sort of * concubinage would appear more tolerable; but under such restric-

* The concubinage allowed in the Roman Law, even after the Emperors were Christian, must not be imagined as an allowance to married men to keep other women. It was an allowance only to men who had no wives, both before and after the empire became Christian, to enter into a sort of marriage perfectly just according to the law of nature, and Christianity too; but such, that the wife and children wanted the honours and civil privileges conferred by the *justae nuptiae*. See *Heineccii Antiqu. tit. de nupt.* The like marriages are now in use in some Christian countries.

tions that the concubine's children ſhould not ſucceed to the wife's portion, or to above a certain ſhare of the common ſtock acquired; and that when the husband takes this liberty, the wife might inſiſt on a divorce if ſhe pleaſed, and have a large ſhare of the common ſtock: and this ſhe might more juſtly inſiſt on if ſhe ſuſpected that the want of offspring was not occaſioned by any indiſpoſition of hers. But when one conſiders the difficulty of determining this point, and the cruel uſe which might be made of the licence of divorcing for ſuch cauſes, or taking ſuch concubines, the general prohibition of both ſeems wiſe, humane, and honourable to our ſpecies; and no general laws can be made free from all inconvenience.

Marriage an equal partnerſhip.

VII. The tender ſentiments and affections which engage the parties into this relation of marriage, plainly declare it to be a ſtate of equal partnerſhip or friendſhip, and not ſuch a one wherein the one party ſtipulates to himſelf a right of governing in all domeſtick affairs, and the other promiſes ſubjection. Grant that there were generally ſuperior ſtrength both of body and mind in the males, this does not give any perfect right of government in any ſociety. It could at beſt only oblige the other party to pay a greater reſpect or honour to the ſuperior abilities. And this ſuperiority of the males in the endowments of mind does not at all hold univerſally. If the males more generally excel in fortitude, or ſtrength of genius; there are other as amiable diſpoſitions in which they are as generally ſurpaſſed by the females.

Nature founds no proper power.

The truth is, nature ſhews no foundation for any proper juriſdiction or right of commanding in this relation; and, previous to ſome poſitive laws and cuſtoms, there is no preſumption that the parties would ſtipulate about any. Where poſitive laws and cuſtoms have long obtained, and ſettled forms of contracting are received, no doubt there is an external right of ſuperiority conſtituted to the husbands. But this ſhadow of right is no better than thoſe which any inſolent conqueror may extort from the vanquiſhed; or any unjuſt ſharper may obtain by ſome imperfection or iniquity of civil laws; or by the weakneſs, or ignorance, or inadvertence of one he is contracting with. To take advantage of ſuch laws or forms, without regard to equity and humanity, muſt be entirely inconſiſtent with an honeſt character. Where husband and wife diſagree in points of management; in ſmaller matters, this deference may be due to the one who has the greateſt abilities, and manages the moſt important affairs, that the other ſhould courteouſly yield, tho' againſt his or her private opinion. If ordinarily theſe ſuperior abilities are in the husband, and his greater ſtrength, and other circumſtances of body, fit him to be employed in the more momentuous affairs, it may more generally be the duty of the wife to ſubmit. But in matters of great importance to the happineſs of a family, if they cannot agree, nature ſuggeſts no other method of deciding ſuch controverſies, but a ſubmiſſion to common friends as arbitrators. Domeſtick matters indeed ſeem to be divided into two pro-

vinces, one fitted for the management of each ſex, in which the other ſhould ſeldom interfere, except by adviſing. CHAP. I.

Many civil laws very unjuſt.

The powers veſted in husbands by the civil laws of many nations are monſtrous, ſuch as that of life and death. To exerciſe any ſuch power, or even that of any corporal puniſhment, muſt be tyrannical and unmanly. Committing to the husband the whole power over the whole ſtock of the family, including the wife's portion, is unjuſt and imprudent, as well as contrary to nature. A wiſe woman, or any good truſtee, retaining a power over a large ſhare of it, would have reſcued from beggary the iſſue of many an unhappy marriage. Affairs of importance ſhould rather be committed to both jointly, ſo that neither ſeparately could tranſact validly about them; and a civil judge, or a prudent umpire be appointed to determine important matters of debate between them: or each ſhould retain the power of managing their own ſhares. In other partnerſhips no ſuch abſolute powers are veſted in any one of the partners, nor are they claimed upon any alledged ſuperiority of genius or fortune; nor is there any occaſion for them: nor do we ſee in them frequent inſtances of capricious injurious treatment given by one partner to another upon any ſuch alledged ſuperiority, as ſome ſaucy, imperious, unmanly wretches afford, as the only recompence to their wives for too much credulity, and an incautious imprudent affection to them: nor does the inferior partner in other ſocieties run into ſuch diſingenuous and ungrateful con-

BOOK III. duct toward the ſuperior, as ſome wives who have got the aſcendant over their husbands practiſe; as it were in reſentment of the unequal condition in which the laws have placed them, and out of oſtentation of their art and ſpirit, by which they have broke through them.

Articles which are contrary to nature are invalid.

The articles above-mentioned are the moſt eſſential. Any contracts of marriage upon other terms, ſuch as contracts for a certain term of years, or thoſe ſuſpended upon the event of children ſurviving; or upon other conditions not in the power of the parties; or polygamy, even in nations where no poſitive law has prohibited it, are truly contrary to nature and juſtice. A good man would not think himſelf free upon the expiration of the term or the death of all the children, tho' he had expreſsly ſtipulated theſe conditions, if upon reflection he obſerved the iniquity or cruelty in ſuch conduct. And he would upon like reflection think all ſubſequent marriages while the former wife lived, to be void; unleſs ſhe conſented to his obſerving theſe contracts, upon ſome reaſonable ſecurity to her and her iſſue. The ſubſequent wives thus diſappointed would have a right to ſuch compenſations as theſe caſes could admit by ſome proviſion for the children they had before ſeparation, tho' they were equally in the fault with the husband, in entring into ſuch a contract.

Impediments of marriage natural and moral.

VIII. We proceed to further obſervations on theſe circumſtances which may either make any contract of marriage null and void from the beginning, or free

either party from the bond of a contract formerly valid. CHAP. I.

In the firſt claſs is a natural incapacity for marriage through an original bodily defect or other accidental cauſes. To which one may add perpetual incurable madneſs or idiotiſm: nay, ſome other incurable grievous diſeaſes which are ordinarily tranſmitted to poſterity. Some diſorders are ſo calamitous that it were the intereſt of ſociety to prevent intermarriages with perſons afflicted with them, even though the other party knew them, and conſented to run the hazard. When both parties are well advanced in years, and there is no proſpect of offspring, there is nothing faulty in the deſire of mutual cohabitation and domeſtick ſociety, where no reaſons of prudence or duty toward any children by former marriages prohibit it. But ſince marriages in a great diſparity of years are manifeſtly contrary to nature, and ought to be altogether prevented or made void by civil law, 'tis an affront to that honourable natural relation, that the name of marriage ſhould be given to any contract between a covetous or a diſſolute youth and an old doating woman, who is courted only for her wealth: or between an old dotard and a laſcivious young girl, influenced by the ſame or worſe reaſons. The ſolemn forms and benedictions uſed on ſuch occaſions are full of profanity, and impious mockery of every thing ſacred.

Another juſt impediment making void a contract, is the want of ſufficient knowledge in minors. 'Tis *Minors incapable of contracting.*

BOOK III. ſurprizing that while all civilized nations, becauſe of the imprudence of youth, have made minors incapable of obliging themſelves in any matter of commerce, and annull all ſuch deeds of theirs, or contracts entered into without the conſent of parents or guardians, yet in an affair of incomparably greater conſequence, the diſpoſal of their perſons, and choice of a partner in all important affairs for life, a joint-proprietor of their fortunes, and parent of their children, every boy paſt fourteen years of age, and girl paſt twelve, can bind themſelves irrevocably without any ſuch conſent; nay, contrary to the expreſs commands of parents. This doctrine ſprung from that fruitful ſource of all corruption and ſuperſtition, the church of Rome; and for ſecuring it ſhe has taken care to blind men's eyes ſo as not to uſe the reſources and exceptions juſtly allowed in other fooliſh or iniquitous contracts, by cloathing this one with a cloud of the myſtical nonſenſe of a ſacrament.

Their contracts are void.

Common ſenſe would teach that * all the marriages of ſuch as had not attained to wiſdom fit for other commerce ſhould be annulled, where the conſent of parents or guardians was not interpoſed, even tho' conſummation had enſued. This law, in appearance ſevere, is yet the moſt merciful, preventing the crime rather than puniſhing it. A woman of chaſtity not willing to proſtitute herſelf would then liſten to no ſolicitations of minors, nor ſtudy to enveigle them. If

* This was the Jewiſh law, and the Roman law too, as may be ſeen *Inſtit. tit. de nuptiis. et Vinnius Comment.*

a young man enticed a raſh incautious girl with oaths or vows that he would confirm the marriage when he came to maturity, it might be left to the election of the girl's parents or guardians, either to compel him to fulfil them, or to annul the contract, and obtain capital puniſhment upon the ſeducer. Such puniſhment none can call too ſevere upon ſuch injuries done to families, when we think them juſt for much ſmaller ones, which deprive us only of a trifling part of our goods. CHAP. I.

IX. The moral impediments or incapacities are theſe. 1. A prior contract makes void any ſubſequent one of the like nature with a different perſon. The law of nature requires that marriages ſhould be publickly known, that no married perſons may deny them, or impoſe upon others, as if they were not married. There is ſome ground here of diſtinguiſhing between an *imperfect contract*, obliging to a future marriage, and a *compleat marriage*; as in commerce † we diſtinguiſh between a contract founding only a *perſonal right*, and the full tranſlation of property or of a *real right*. A prior contract about a future marriage ſhould make void a ſubſequent one of the ſame kind with a third perſon; even where the third perſon knew nothing of the prior contract. The perſons guilty of ſuch frauds deſerve ſevere puniſhment: but an imperfect contract without conſummation, ſhould not make void a ſubſequent conſummated marriage with a third perſon who was not apprized of the prior contract. *Moral impediments. 1. A prior contract.*

† See book ii. c. 8. § 1.

BOOK III. For in this caſe one of the two innocent perſons who contracted with the fraudulent party, muſt be diſappointed, the defeating of the imperfect contract, upon which no cohabitation enſued, is a much leſs misfortune than annulling the perfect marriage. If the third party knew of the prior contract, this is a juſt reaſon why the marriage ſhould be annulled; the puniſhment is too light for the fraud. The evils occaſioned by ſuch frauds are much more grievous, and more deeply reſented than thoſe injuries which ſubject to capital puniſhment, and the ſevereſt laws againſt them would be merciful, as they would prevent the crimes.

Near degrees of conſanguinity or affinity.

X. The nearer degrees of conſanguinity and affinity, Chriſtians, and many Heathen nations too, have always looked upon as moral impediments of marriage. The natural reaſons commonly alledged ſcarce ſeem to have force proportioned to the great infamy and the notions of impiety attending ſuch marriages. The moſt abhorred kind is that between the aſcending and deſcending degrees. Not only the inequality of years, but the natural reverence in theſe relations are very oppoſite to the equality produced by marriage. But greater inequalities of years ſometimes do not make marriages either immoral, or even imprudent. And it is not every ſort of reverence, due to higher merit or authority, or gratitude due for the greateſt benefits, which would be inconſiſtent with this relation, tho' that of parents ſeems inconſiſtent. 'Tis ſcarce accountable without ſome natural inſtinct of averſion to ſuch mixtures, how they have been ſo

universally abhorred. A monstrous practice received by one sect in Persia, is no objection to this supposition, which is confirmed by the sentiments of all the world besides. CHAP. I.

'Tis argued that brothers and sisters by living together from their infancy would fall too early into such passions, and be less capable of resisting sollicitation, through their great intimacy, were there not a severe prohibition, making such commerce matter of abhorrence. But it often happens that cousin-germans, and remoter relations, are educated together in the same intimacy, and we see no dismal effects from the permission of intermarriages among them. And were these marriages with sisters lawful, one would think the early passions would do no more harm than they must frequently do on other occasions, where young people contract early acquaintance. If there be any natural aversion in this case too, as well as between parents and children, checking the general impulse, it seems not so strong: and we find that such marriages of brothers with sisters have been more received in Heathen nations. There is more of equality in this relation; whereas the long habitual authority exercised by parents, and the reverence and subjection to which children are enured, may possibly without other principles restrain all these amorous inclinations so naturally requiring an equality. *Reasons alledged.*

Whatever natural causes there may be for the very general aversions to marriages among the nearer relations by consanguinity and even affinity, 'tis certain *Some tradition of a divine law.*

BOOK III. there have been ſuch averſions in many nations little civilized, and where we can ſcarce imagine that either very artful conſiderations of general intereſt, or very delicate ſentiments of decency have occaſioned them. And the abhorrence of ſuch marriages was every where much higher than any reaſons of expediency or prudence could have occaſioned. Hence ſome ingenious men conclude that there has been ſome * early divine prohibition, the memory or tradition of which has been preſerved among moſt nations, in ſome more diſtinctly, and in others leſs, as there was greater or leſs attention to the purity of manners.

A plain reaſon of prudence for the prohibition.

There is one manifeſt and important reaſon of prudence why a wiſe legiſlator ſhould prohibit ſuch marriages, that were they not reſtrained and abhorred, the early opportunities would make them exceedingly frequent, and by this means the ſacred bonds of affection would be too much confined, each family would be a little ſyſtem by itſelf, detached from others; at leaſt as to all the ſtronger bonds of affection. Whereas now, in conſequence of the prohibition, and the general abhorrence enſuing upon it, or upon any other cauſes which may probably concur in this matter, multitudes of families are beautifully interwoven with each other in affection and intereſt, and friendly tyes are much further diffuſed. There may be other reaſons in nature not known to us, or not yet fully obſerved. A mixture of different families may be ne-

* This ſeems one of the beſt evidences for the Jewiſh tradition of the *Praecepta Noachidarum*.

ceſſary to prevent a degeneracy of the human race; as ſome pretend that ſuch intermixtures, or croſſing the ſtrain by cattle of a different breed, is neceſſary to prevent their degenerating; if we can decently make ſuch compariſons. CHAP. I.

The advantages from it.

We ſee plainly the above-mentioned advantage in the reſtriction, and ſcarce any thing grievous can enſue from it. Nature has provided other ſorts of affections among kindred, which are great ſources of joy, and ſufficient incitements to the duties of thoſe relations. Theſe conſiderations juſtify any legiſlator in prohibiting ſuch marriages: and after the prohibition, and the conſequent infamy which will attend them, nothing but a diſſolute luſt, with an inſenſibility to all honour, and great inhumanity toward the other party whom one muſt involve in this infamy with himſelf, can move one to break through ſuch prudent laws. But that there is not a neceſſary invariable turpitude or moral impurity in all theſe marriages ordinarily called inceſtuous, antecedently to the prohibition of them, muſt be owned by ſuch as conſider that God laid the immediate children of Adam under a neceſſity of inter-marrying, and for ſome political reaſons ordered ſuch marriages on certain contingencies as were ordinarily prohibited.

The practice of Chriſtians.

Chriſtian ſtates † have in this matter followed the Jewiſh laws, prohibiting all marriages in the aſcend-

† How far the New Teſtament confirms and adopts the Jewiſh laws may be ſeen in the Divines and Canoniſts. Grotius, Puffendorf, and Barbeyraque have omitted little of conſequence in this queſtion.

BOOK III. ing and defcending lines; and all in the tranfverfe line between fuch as ftand in a relation like to that of parents and children, fuch as between uncle and niece, aunt and nephew, or grand-uncle and grand-niece; or any of their defcendents; and all marriages among collaterals within the fourth degree. And prohibiting perfons to marry any one in fuch relation of affinity by a former marriage, as they could not marry in the like relation of confanguinity to themfelves. Marriages in the fourth and all further degrees are allowed.

Degrees how computed in the civil and canon laws.

The degrees of confanguinity among collaterals were thus computed, as we fee by the civil law. All kinfmen come from one ftock: now, "as many ge- "nerations as have been from the ftock in both lines, "fo many are the degrees." Brothers and fifters are in the fecond; uncle and niece, in the third; couſin-germans in the fourth, and their children are to each other in the fixth. Among the other frauds of Popery, their canoniſts, to draw more money to their courts for difpenfations, encreafed the prohibition exceedingly. They preferved the words of the old rule, but changed their meaning by a new method of computing the degrees, according to the perfons or generations from the common ftock upon one fide only, taking indeed the longer line of the two. Thus brother and fifter are in the firft degree: uncle and niece in the fecond, and couſin-germans too in the fecond; and the children of couſin-germans are only in the third; and fo cannot marry without difpenfation; the chil-

dren of ſecond couſins are in the fourth degree, and theſe are the neareſt who may marry without it. CHAP. I.

XI. Theſe are the impediments which make marriages from the firſt null and void, according to the Chriſtian and civil law. We next conſider the cauſes of divorce, which frees one or both parties from a bond once valid. Theſe are, as in all other contracts, the violation of any of the eſſential terms, either by the crime of one party, or by any ſuch event as makes the party utterly incapable of the duties of that relation, when the other did not conſent to be bound upon ſuch events. 'Tis manifeſt that adultery in the wife is a juſt cauſe of divorce; ſo is alſo that of the husband, ſince he engages to fidelity to the wife, as he naturally ought to do, for reaſons above-mentioned. Nor ought the contract to be ſuſpended upon the condition of offſpring ſurviving.

The juſt cauſes of divorce, 1. Adultery.

The adultery of women makes offſpring uncertain, and thus does the greateſt poſſible injury, beſide its perfidy; that of men is manifeſt perfidy, and naturally alienates the affections of the husband from his wife and lawful children. It generally diverts him from all domeſtick cares and honeſt induſtry for his family, and contributes to the ruin and infamy of other women. By this practice an uncertain offſpring may ariſe to infamy and miſery, without proper education; or if the offſpring be ſufficiently known to the adulterous father, his proper care of proviſion for it muſt be injurious to his lawful children; and may provoke their injured mother to a worſe revenge, as ſhe ſees ſuch

BOOK III. perfidy in her husband. Indulgences of this kind with prostitutes where there is no prospect of offspring, must on other accounts be criminal, as they alienate the affections from the wife, and contribute to that infamous course of life, in which the prostitutes make it their business to divert from marriage, and all sober industry, and cares of a family, and inveigle youth into such vicious habits as are inconsistent with any honourable pursuits. As to that adultery which corrupts the wife of another, no crime can be more horrid, for reasons already mentioned. How much more grievous are such injuries, which cheat men's tenderest affections by a spurious brood, alienate the affections of the partner they have chosen for life, and impose on them a false offspring to inherit all their labours, than any injuries in our goods by stealth or robbery? Sure no punishment can be too severe for them, † and death was justly inflicted by the Jewish laws.

2. Obstinate desertion, and some settled enmities.

Another cause of divorce is the obstinate and unreasonable desertion, or refusal of cohabitation, by one party; upon which indeed the other may justly compel to cohabitation by force: but if all hope of satis-

† See Levit. xx. 10. Deut. xxii. 22. The penalties in the old Roman and Grecian laws for adultery, and debauching free citizens unmarried, even without violence, were very high. We find death might be inflicted in the fact. And we see that castration was an ordinary punishment. The old form of prosecuting is not very clear. The *Lex Julia de Adulteriis* allowed the *actio publica* or prosecution by any who inclined in the name of the state, and the penalty to the man was *relegation*, or a sort of banishment, and confiscation of the criminal's estate. Constantine made adultery capital. Cod. l. 9. tit. 9. l. 30. The following Emperors abated this severity. Nov. 134. 10. Justinian confined the adulteress for life in a monastery; and continued the capital punishment on the adulterer.

faction that way fails, the innocent party is free from the bond. A friendly ſociety for life is an eſſential article ſtipulated on both ſides, and the violation of it by one party muſt ſet the other free. And for the very ſame reaſons, an implacable hatred or enmity, ſufficiently declared on one ſide, without juſt provocation given by the other, ſets the innocent party free. Thus, attempts upon life by poiſon or aſſaſſination, or falſe accuſation in capital actions, or barbarous aſſaults often repeated, were deemed in the civil law cauſes ſufficient for a divorce: as was alſo perpetual madneſs, as thus the eſſential articles are violated, or made impoſſible to be performed, as well as by adultery.* CHAP. I.

How divorces ſhould be made

Marriage indeed differs from many other contracts in this, that other innocent perſons, the common offſpring, are deeply concerned in the continuance of the contract. It ſhould not therefore be left to the pleaſure of the parties to break off the contract as they pleaſe. But when through the fault of either ſide the eſſential ends of this relation are defeated, viz. the procreating and educating of offſpring, and a friendly ſociety for life; the innocent party may be free, if this is more eligible than compelling the other to the duties of this relation; and has a right, which the ſociety ſhould maintain, of making the guilty party by labour or goods contribute in another manner the proper ſhare of charge toward the maintenance and education of the common offſpring.

* To deny obſtinate deſertion to be a cauſe of divorce or *repudium*, becauſe the innocent party does not put away, but is left by the guilty, is only cavilling about words.

BOOK III. Courts of juſtice ſhould take cogniſance of the violations of this contract in civil ſociety, and that in a more ſevere manner than in other matters of contract, and redreſs the innocent at the expence of the guilty. Nay, as in moſt ſtates, an equitable power is lodged in ſome court for redreſſing oppreſſive contracts, and reſcinding them either in part or in whole; it might be equally convenient to lodge in proper hands a power of diſſolving ſuch marriages as prove miſerable to both parties, either by the fault of both, or by ſome ſingular diſagreement of their tempers, when upon a conſiderable trial 'tis found that there can be no hopes of any eaſe or peace while they cohabit; and both are willing to ſubmit to any terms for a divorce; taking alſo ſufficient precaution for the common offſpring, when there is any, out of the goods or labours of both. Such ſeparations indeed ſhould not be lightly allowed upon any ſmaller contentions, or tranſient animoſities: nay, ſuch penalties and inconveniences ſhould attend them, as would reſtrain both parties from ſeeking them for ſmaller cauſes; and reſtrain both from any ill-natured conduct, with deſign to tempt the other to concur in ſuing for a ſeparation. If a large ſhare, ſuppoſe two-thirds, or an half of the goods of both, or a like proportion of the profits of their labours, were immediately to be adjudged into the hands of ſome proper truſtees for the benefit of their offspring, when they had any; or, if they had none, ſome large ſum, in proportion to their wealth, impoſed as a tax to the ſtate, this might prevent the

By courts of juſtice or equity.

ſuing for divorces on trifling cauſes, or provoking each other deſignedly by ill uſage to concur in ſuch a ſuit. And new marriages might be prohibited to both for a conſiderable time, to try if they could return into a mutual affection. If under theſe inconveniences, they choſe to be divorced, to avoid the ſuperior miſeries they ſuffered from this relation†, it would be cruel to deny them this liberty. Where the fault lies chiefly on one ſide, the penalties or hardſhips upon a divorce ſhould chiefly be inflicted on the guilty party.

† The paſſages of ſcripture upon which divorces have been univerſally prohibited in all caſes except that of adultery, are Matth. v. 32. Mark x. 5—12. Luke xvi. 18. But ſome prohibitions equally univerſal are allowed to be elliptical expreſſions, or to admit more exceptions. Thus, Matth. v. 34, &c. and James v. xii. are allowed to be elliptick, and would have been thus apprehended by thoſe to whom they were addreſſed, viz. "Your doctors "teach that ſome forms of ſwearing are "obligatory, and others not obligatory; "that ſuch and ſuch are obligatory, and "others not. (See Matth. xxiii. 16—22.) "But I ſay unto you, ſwear not at all [with-"out intending to be bound] neither by "Heaven, &c." And then our Saviour ſhews that all theſe forms, even thoſe which their doctors denied to be obligatory, are metonymical forms of ſwearing by God. See *Grotius D. J. B. et P. l. 2. c.* 13. In like manner, we may judge the prohibitions of divorce elliptical, without violating the rule *Exceptio confirmat regulam in non exceptis*. The Jewiſh doctors allowed many trifling cauſes of divorce, ſome one or other of which muſt have been ſpecified in the bills of divorce, as theſe bills were often credentials to the women, that it was not for the more infamous cauſes that they were divorced. Among the cauſes allowed, no doubt, adultery would be one. The full ſentence then may be this. "Who-"ſoever puts away his wife for any of the "reaſons [allowed by your doctors] ex-"cept that one of adultery, and marries "another, commits adultery." This does not exclude other juſt cauſes, as appears by 1 Corinth. vii. 15. which declares the Chriſtian party to be free from the marriage-bond upon the obſtinate deſertion of the infidel. The Jews would not make this a cauſe: they treated their wives like ſlaves: it was only husbands who divorced. Upon deſertion they would recover their wives as they would their cattle, and might be as little ſollicitous about their affections as thoſe of their ſlaves. From the figurative ſtile of the ſcriptures one may perhaps alſo extend the meaning of adultery to other faults; to the alienation of heart by obdurate hatred or ill-nature. Such diſpoſitions defeat one great end expreſſed by God in the firſt inſtitution, and expreſly ſtipulated and promiſed mutually by the parties, that of being *mutual helpers* in this partnerſhip for life. Geneſ. ii. 18, and 24. many other crimes, and much inſolent treatment are as direct violations of the eſſential articles of this contract as adultery.

BOOK III.

The original of corrupt laws among Christians.

XII. Were the corruptions of such as profess the best institutions chargeable upon the institutions themselves, or their author, nothing could be more opprobrious to Christianity than the laws received in many Christian states, about fornication, adultery, and divorces. The Scriptures indeed recommend all purity of manners, and represent all contrary vices in their odious colours, without any disguise: but in many Christian states, fornication of the worst sort, the debauching free citizens formerly innocent, by all frauds and perjuries, is no civil crime, unless force has also been used; as if the laws allowed all who pleased to practise all manner of lewdness. The ecclesiastick punishment is a jest to those who have made tolerable advances in impudence. Nor has adultery any proper civil penalties on either party. In some countries a pecuniary fine is sometimes given as a compensation of damages: no person is incapacitated by such crimes, for any honours or offices civil or military, or worse received in his pretensions to any station. And yet God and the world sees how certain trifling ceremonies and modes are enjoined by ecclesiastick laws, and adopted by the civil, the noncompliance with which, tho' from a principle of conscience, or some opinion that they are offensive to God, shall exclude a man from all hopes of preferment, or any reputable offices in his country.

Again, tho' adultery is allowed a just cause of divorce, such proofs of it are required, as it is impossible generally to obtain. Whereas, since the mutual satisfaction of the parties in this relation, if they are

faithful in it, muſt be of more importance than the cultivating any other friendſhip; other intimacies ſhould certainly yield to it, as far as they are inconſiſtent with it, which however they ſeldom are to people of virtuous intentions. If therefore either party ſuſpects the other of too great intimacy with any third perſon, and intimates this ſuſpicion before witneſſes, all future voluntary converſation of the party thus admoniſhed with the third perſon ſuſpected, in any retired place without witneſſes, ſhould be deemed a proof of adultery. The moſt friendly converſation with one we honourably love may be obtained ſufficiently in publick places, or in ſuch where we are in the view of others.

Abſurdities in the canon-law.

Again, when the canon law allows a divorce for adultery, which is the only cauſe it ſuſtains, neither are the guilty puniſhed as they ought, nor juſtice done to the innocent. Both are alike reſtrained from marriage, againſt all common ſenſe. If the guilty are allowed to live in the ſtate, they are perhaps juſtly hindered from marrying the partner of their guilt; leſt people ſhould commit adulteries with this view. But they ſhould not be left more expoſed to that vice to which they already appeared too prone. Other puniſhments ſhould be inflicted: and it would be more proper to compell them to marriages with perſons formerly infamous, and of ſufficient luſt for them, to prevent their corrupting others. Reſtraining the innocent party from the ſatisfaction of marriage and offspring is a manifeſt iniquity, a new and monſtrous injury.

BOOK III.

The cauſes of them in hiſtory.

The original of theſe laws is eaſily found in hiſtory. During the early perſecutions, ſome melancholy notions of ſanctity in all ſufferings, and of impurity in many of our moſt innocent enjoyments generally prevailed. Worldly buſineſs was thought inconſiſtent with the heights of piety, tho' piety is never more ſincere and lively than when it engages men in all ſocial and kind offices to others, out of a ſenſe of duty to God: and * juſt philoſophy, as well as religion, could teach that true devotion, tranquillity, reſignation, and recollection too, may be practiſed even in a court or camp, as well as in a wilderneſs. But celibacy was early admired as ſacred, and the chaſteſt marriage was reputed at beſt a ſtate incapable of the higheſt purity. The eccleſiaſticks affecting to be examples of perfection, both generally practiſed celibacy, and recommended it. When by the eſtabliſhment of Chriſtianity they got acceſs to wealth and power, they grew as corrupt as the layety; and yet, not to renounce their old known maxims, and to retain their authority and veneration with the layety, they muſt keep up this ſhew of ſanctity, and of diſengagement from the world, tho' contrary to the expreſs doctrine of the apoſtles. Celibacy was enjoined on the clergy in ſome early councils, and theſe injunctions often repeated in corrupt ages, while they were generally framing one canon after another to prevent their infamy by keeping concubines and whores, and with little ſucceſs. Under ſuch reſtraints from lawful en-

* See Marc. Antonin. in a variety of paſſages.

joyments, no doubt, much debauchery was ſecretly practiſed by a corrupt generation, ſupported in eaſe and luxury: and by their artifices, in the eleventh and twelfth centuries, the ages of ignorance and ſuperſtition, the cogniſance of matrimonial cauſes, and of all venerial crimes, was wreſted from the ſecular judges, and aſſumed by the ſpiritual. The puniſhments they appointed were ſome uſeleſs and often trifling pennances, and donations to eccleſiaſticks. The former laws were too ſevere for their purpoſes. Adultery was the moſt convenient crime for ſuch clergy, with leſs danger of diſcovery, and free from the charge of maintenance to the ſpurious offspring. The proof requiſite for conviction muſt be made difficult, or almoſt impoſſible; and all proſecutions muſt be diſcouraged. The injured proſecutor muſt be reſtrained from marriage, after divorce obtained upon the fulleſt proof. It muſt have been monſtrous, and even ſhocking to a Popiſh nation, to have relaxed all penalties upon adultereſſes and their gallants, without a like lenity to the adulteries of husbands. Thus the puniſhments were made light to all. And the clergy well knew their own ſuperior advantages, by their reputation for ſanctity, and their acceſs to great intimacies by confeſſion, and other religious artifices.

The general duties in this relation.

XIII. The general duties of this relation may be abundantly known from the ends of it. As this ſtate ſhould be a conſtant friendſhip for life, it muſt require the greateſt previous caution in chuſing partners, who by their virtue, good-nature, prudence, and ſuitable

BOOK III. tempers, will make this relation an inward friendſhip founded on ſincere eſteem. 'Tis incumbent on all who enter into it, to acquire an habit of good-nature and ſelf-command, as well as knowledge of the affairs of life. In chuſing a proper perſon, the advice of friends ſhould have the greateſt weight. The affections of the young are often engaged without deliberation, and, when they are ſo, they cannot judge calmly and impartially.

'Tis of great uſe to be previouſly well apprized of the infirmities and imperfections of the very beſt of mankind, and not to let our imaginations ſwell with airy hopes of every thing calm, and ſerene, and prudent, in the whole deportment of each other. The tempers of the young often appear ſuch to each other, while the ſtrong mutual paſſion poſſeſſes them, and they are put to no trial by the troubles and diſappointments of domeſtick affairs: and then every little ruffle or oppoſition is matter of ſurprize and offence. But if we are well apprized of the weakneſſes and ſudden paſſions incident to the beſt tempers, we ſhall bear them patiently from one of prevalent goodneſs, and have far leſs vexation or diſguſt from the common occurrences of life: and every good and lovely diſpoſition, every act of ſelf-government and condeſcenſion, will be mutually the more eſteemed, and the more endearing.

The ſcheme of Plato conſidered.

XIV. The refinements of * Plato on this ſubject cannot be paſſed in ſilence. He obſerves the many in-

* De Repub. l. 5.

conveniences ariſing from the narrow bonds of wedlock and parental affection: that men confine their views and affections to a few objects, and grow negligent of more extenſive intereſts, while they are warm in purſuit of thoſe of their children and kinſmen; that vices are overlooked in them, and the ſeverity of diſcipline relaxed: innumerable contentions are raiſed by jealouſy, and the claſhing intereſts of families. Wealth is often heaped up for the moſt worthleſs members of ſociety, and men are promoted to honour and power from theſe narrow motives, and not in conſequence of virtue and merit. He propoſes therefore a ſcheme for the * ſupreme order in his ſtate, by which, as all property is excluded, ſo are all theſe narrower tyes of affection. By his plan, no man was allowed a wife to himſelf, nor could father or mother know their own offspring, and ſcarcely know each other. All children were immediately after birth removed to publick nurſeries, and thus made children of the ſtate. Whoever reads this plan, will find many of the aſperſions caſt upon it to be unjuſt. Never was there in any plan leſs proviſion made for ſenſual gratification.

The juſt objections againſt it.

The grand fault of it ſeems to be, that it is not adapted to human nature, and to the affections which God has implanted in it. We ſhewed † already, the ſuperior evils to be dreaded from community of goods, and this community of offspring would occaſion much more. And firſt: That neceſſary care and labour in the rearing and education of children, now

* The Φυλακες, or guards.

† *Pro conjugibus et liberis, pro aris et focis.*

BOOK III. born by the parents with pleaſure, through their fond affection, would be an unſupportable toil to others, and would ſeldom be faithfully executed. Again, life would be robbed of its ſweeteſt enjoyments in the tender conjugal and parental affections, which could never be compenſated either by loving a nation at large, or by particular friendſhips. And for particular friendſhips, which no ſcheme can exclude, even tho' no tyes of blood were known, while our hearts continue as God made them, they muſt produce many of thoſe dreaded evils, unleſs mankind were generally much wiſer in their choice of friends, than in the marriage choice, or in parental cares. Do not we all ſee that theſe factions which often tear ſtates aſunder are very little influenced by tyes of blood, and frequently make men counteract them? they ariſe from ambition and the different opinions about the proper adminiſtration of affairs, and from admiration and zeal for favourite characters upon whoſe fidelity and wiſdom the ſeveral parties depend. Why then exclude the higheſt ſatisfactions of life, thoſe of mutual love in ſuch tender relations, which have always been found the chiefeſt ſprings of induſtry, and an incitement to * zeal for our country's defence, and to all honourable ſervices?

Higher knowledge and virtue muſt be introduced, and our natural affections ſuppreſſed, before induſtry, activity, labour, and dangers can become agreeable from a calm extenſive affection alone, without any of

* B. II. Ch. vi. § 5.

theſe tender bonds; and without the hopes of exer- CHAP. 2.
ciſing, according to our own judgment, liberality, ge-
neroſity, and munificence, and contributing to the
happineſs of ſuch as are peculiarly dear to us. And
yet a lower degree of wiſdom and virtue in the legiſ-
lators of any ſtate might contrive * ſuch laws about
education, a cenſorial power, elections to offices and
honours, and ſucceſſions to the fortunes of parents,
as would generally prevent the worſt of thoſe evils
Plato dreaded; and that at a much leſs expence than
that of baniſhing all the tendereſt joys of life in the
natural relations of marriage and families. The end
of civil polity, as † Ariſtotle obſerves, among his juſt
cenſures upon this ſcheme, is not mere unity and ſafe-
ty, but the general happineſs of a people.

CHAP. II.

The RIGHTS *and* DUTIES *of* PARENTS *and* CHILDREN.

The natural inſtincts ſhew the rights.

THE deſire of poſterity is natural to mankind, tho' in ſome inſtances it is reſtrained and over-powered by other deſires. Such is the conſtitution of nature, that human offspring long continues in a very infirm ſtate, needing the continual aſſiſtance and care of others, both on account of its weakneſs, and its want of all knowledge of the dangers it is ſurrounded with. A great deal of information and inſtruction,

* For this ſee *Xenoph. Cyropoedia. More's Utopia. Telemachus*, and *Harrington's Oceana.* † See *Ariſtot. Polit. l.* 2.

BOOK III. and many reſtraints upon their appetites, are neceſſary for preſerving children to maturity, and fitting them for acting their part tolerably in human ſociety. For all this indigence nature has provided a ſupply by implanting the tendereſt affection in the breaſts of the parents, exciting to and ſweetening this long laborious attention. And as we are a rational ſpecies capable of fore-thought, and gathering prudence by time and obſervation, this affection is made as laſting as our lives; ſince children during the life of their parents may need their advice and counſel, and be exceedingly profited by them in many other reſpects. And the parents during life may reap new pleaſures, by means of this ſtrong and conſtant affection, from the proſperity of their children. Thus nature has conſtituted an amiable ſociety, a permanent relation, by theſe laſting affections in the parents, and by the ſtrongeſt motives of gratitude preſented to the minds of the children to confirm the natural affection on their parts.

The ſtate of children and the parental affection found the power.

The intention of God in this matter, is manifeſt by this whole contrivance. The parental affection ſuggeſts the permanent obligation, on parents to preſerve their children and conſult their happineſs to the utmoſt of their power. The weakly and ignorant ſtate in which children long continue, ſuggeſts the parents right to an unlimited power of directing their actions for their ſafety and right education, and yet makes this power eaſy and ſafe to the children, by reſtraining all unneceſſary ſeverity. The parental af-

fection itſelf, when the children come to mature ſtrength and knowledge, muſt procure the ſatisfaction of liberty to them, when they are thus capable of enjoying it, and exerting their own wiſdom in the buſineſs of life; and yet will continue to them all the advantages of the counſel and other kind offices of parents. The children, on the other hand, as ſoon as they can know any thing of moral obligation, muſt ſee their duty of ſubjection and obedience in their early years, their duty of gratitude, and of making all returns they can to ſuch tender benefactors; particularly, of complying with their inclinations, as far as they can conſiſtently with their own natural ſatisfactions in life, nay, ſacrificing, in their turn, to their parents, much of their own inclinations or pleaſures not abſolutely neceſſary to their happineſs. They muſt diſcern the ſacred duty of ſupporting their aged parents, in their ſecond infirmity or childhood, and bearing with their weakly humours and peeviſhneſs; as parents from a fond diſintereſted affection long bore with ſuch manners of theirs in their childhood; without which they never could have attained to maturity; nor could any human laws or vigilance of civil governors have enſured their preſervation, or compelled their parents to that faithful and laborious attendance to it. CHAP. 2.

II. The manifeſtly diſintereſted nature of this affection ſhews at once the nature and duration of the parental power. The foundation of the right is the weakneſs and ignorance of childhood, which makes it abſolutely neceſſary that they ſhould be governed a long

The duration of parental power.

BOOK III. time by others: and the natural affection points out the parents as the proper governors, where no prudent civil inſtitution has provided more effectually for their education. The generous nature of this affection ſhews that the power committed by nature is primarily intended for the good of the children, and, in conſequence of their happineſs, for the ſatisfaction alſo, and joy of the affectionate parent. The right therefore cannot extend * ſo far as to deſtroy the children, or keep them in a miſerable ſtate of ſlavery. When they attain to mature years, and the uſe of reaſon, they muſt obtain that liberty which is neceſſary to any rational enjoyment of life. The parental affection naturally ſecures to them this emancipation, as the reaſon God has given them intitles them to it.

'Tis common to both parents.

This foundation of the parental power plainly ſhews that it equally belongs to both parents; and that the mother is wronged when ſhe is deprived of her equal ſhare, unleſs where ſhe has voluntarily conſented, in dependance on the ſuperior wiſdom of her husband, to ſubmit all domeſtick matters to his laſt determination. But whenever the father does not interpoſe, or is abſent, or dead, the whole right is in the mother. This whole power, as it is intended for the preſerva-

* The doctrine of Hobbs on this ſubject muſt move the indignation of any one who has the common feelings of humanity, tho' ſome parts of his reaſonings are uſed by others inadvertently in eſtabliſhing ſome favourite ſchemes. Hobbs makes children a piece of goods or chattels, firſt occupied by the mother, and abſolutely in her right, becauſe ſhe could have provoked abortion, or ſtrangled them in the birth. But in marriage, ſhe and all her rights are ſubject to the husband as the ſtronger, or in virtue of her conſent. And thus the abſolute *patria poteſtas* is conſtituted for life, ſo that the father may kill, ſell, or enſlave his poſterity for their whole lives.

tion and good education of children, can only extend to moderate chaſtiſements, ſuch as are not dangerous to life: and its higheſt puniſhment muſt be abdication or expulſion from the family. 'Tis manifeſt too, that its nature, intention, and duration are quite different from that of civil power, to which large numbers of adult perſons muſt be ſubjected continually, for a common intereſt of the whole ſociety; which too muſt extend to all puniſhments and violence that may be requiſite for the common defence and ſecurity; as it is not founded on any particular affections implanted by nature toward a few, but upon the general affection; and contrived by men for the common intereſt of a large ſociety. CHAP. 2.

'Tis not founded on meer procreation.

To found this parental power on mere procreation, is a fooliſh extending of ſome maxims received about property to the moſt foreign ſubject imaginable. The bodies of children were formed in their firſt ſtate out of ſome parts of the parents bodies; but not by any wiſdom or art of the parent; nay ſometimes contrary to their deſire and intention. God who gave parents theſe diſpoſitions ſubſervient to procreation, formed both the bodies of the children and the parents, and ſo deſtined this order of procreation, as to ſhew the rights and duties of both parents and children; and the ſoul, the principal part, is his own immediate workmanſhip. So that children cannot be deemed acceſſions or fruits going along with the property of their parents bodies. They commence rational beings, parts of this great ſyſtem, with the ſame

BOOK III. natural rights which their parents enjoy, as ſoon as they have reaſon to uſe them. Generation no more makes them a piece of property to their parents, than ſucking makes them the property of their nurſes, out of whoſe bodies more of the matter of a child's body is ſometimes derived, than was from both parents. On this footing the proprietor of any cattle by whoſe milk and wool they are fed and cloathed for any number of years would ſtill have a ſtronger claim. The parent who expoſes his child, or neglects his education, has no right of power; and whoever voluntarily undertakes the neceſſary office of rearing and educating, obtains the parental power without generation. Generation points out the perſons on whom this duty is incumbent, by the natural affection accompanying it; and theſe ſhould not be excluded from diſcharging it, and enjoying the power requiſite for it, except for a ſuperior benefit to the child by ſome finer contrivance for education. But when the parents are dead, or wickedly decline this charge, whoever undertakes it, has the whole parental power.

The rights contained in it.

This grand end of the parental power ſhews that it includes few of thoſe rights contained in the *patria poteſtas* of the Romans. The child is a rational agent, with rights valid againſt the parents; tho' they are the natural tutors or curators, and have a right to direct the actions, and manage the goods of the child, for its benefit, during its want of proper knowledge. If goods are conveyed to a child, by donation, legacy, or inheritance, the parents are not the proprietors;

nor have they a right to more of the annual profits than compenſates all charges and labours uſefully employed in the child's maintenance and education. The ſame may be ſaid of any acquiſitions which a child of ſingular ingenuity and dexterity might make before it came to the full uſe of reaſon, which ſometimes might far ſurpaſs all the prudent charges of its education. CHAP. 2.

III. So far concerning the proper parental power, which naturally expires when children come to the full uſe of their reaſon. There are two other ſorts of power generally ſucceeding to it, but of a very different nature, and upon different foundations; the one, that of the *head of a family;* the other, that authority or *influence*, rather than power, which a parent ſhould enjoy during life over children when they are adult, and live not in the parents family. As to the former, while one ſupports in his family adult children, or any friends, 'tis ever expected that they ſhould conform themſelves to the order of the family, or that rule which the maſter of it ordinarily claims: and while they voluntarily chuſe to ſtay in it, they are juſtly preſumed to have conſented to this ſubjection. If they did not conſent, they ſhould not have taken this ſupport or theſe conveniences. This power is ſolely founded on the conſent of ſuch as are ſubject to it, declared by their voluntary continuance in the family. This power cannot be of great extent: little ſeverity is requiſite for the order of a virtuous family: the laſt puniſhment ſeems to be excluſion from *The rights of the head of a family.*

BOOK III. it. If crimes are committed which deſerve ſeverer puniſhment, the maſter of the family, or others, have the ſame right of puniſhing as they would have had tho' the criminal had never lived in this family. No right to inflict the ſeverer puniſhments ariſes from this ſtate or relation. If the cuſtom prevail'd in any age that maſters of families aſſumed higher power over their domeſticks; and if adult perſons who knew this, voluntarily remained in theſe families, thus conſenting to the power aſſumed; they might, no doubt, thus conſtitute as high a power over themſelves as that ordinarily aſſumed by civil magiſtrates, and thus make a family a little monarchy.

The filial duty is perpetual.

IV. The other power, or weight and influence rather, is that which parents ſhould always retain over children, even when they are ſupporting themſelves in ſeparate families. This is ſtill more remote from any civil authority or proper right of coercion, or of annulling or invalidating any deeds of the children. It is no more than a claim founded on ſtrong bonds of gratitude, and all the generous ſentiments of children, and the deference due to the ſacred order of nature; which muſt incline them to gratify, as far as they can, and comply with the inclinations of ſuch kind benefactors, who with ſuch patience and laſting tenderneſs ſupported them in their infancy, and ſtill purſue them with the ſincereſt affections. It muſt be highly ungrateful in children, not to conſult their ſatisfaction in their old age, or to add to the uſual diſtreſſes of that ſtate of life; or to decline ſacrificing

their ſmaller or leſs neceſſary intereſts or pleaſures to thoſe of ſuch kind benefactors and faithful friends. CHAP. 2.

Obliging to grateful compliance.

In particular, children are ſacredly bound to conſult the inclinations of parents in ſuch matters as are of high importance to the parents as well as to themſelves; ſuch is their marriage, from which thoſe are to iſſue who muſt repreſent their parents, as well as themſelves, and are often as dear to the remote as to the immediate parents. Marriage indeed is of more importance to the happineſs of the parties than to that of their parents; and conſequently parents can have no right of compelling the parties contrary to their inclinations, to the deſtroying of all the ſatisfaction of their lives. And yet, on the other hand, a child's marrying with one unalterably diſagreeable to his parents, muſt prevent almoſt all agreeable ſociety with the parents. An high deference therefore to the parents in this matter muſt be due from the child even in mature years and judgment. It would be a cruel return for all the care and conſtant affection of the parents, by a precipitant marriage to cut off all their ſatisfaction in thoſe who ſhould be deareſt to them. If the child judges the parents averſion to be unreaſonable, all proper repreſentations ſhould firſt be made, and arbitrators called in, that wiſe friends may conquer the prejudice. Without firſt trying ſuch methods, it is cruel and ungrateful in a child, to take this important ſtep againſt the parents conſent. If theſe means are tried, and the averſion judged unreaſonable by arbitrators, and the child's affections

BOOK III. so engaged that a disappointment must make life miserable, the child may use its liberty for its own happiness; and must by all future dutiful conduct study to conquer the parents prejudice.

Duty toward the weak or froward.

As the sacred bonds of parental affection are seldom removed or broken altogether by the undutiful conduct of children; so a good man would make the bonds of nature on the other side so strong in his heart, that no provocation should break them. This deference or reverence a good man would pay to the order of nature, that he would retain a stronger goodwill to the very worst parent, one who had ruined the stock of the family, or even exposed himself in his infancy, than toward a stranger of like character. A child come to maturity, as far as the laws of society will allow, may justly stop a parent in those ruinous courses. And yet it is still amiable to shew a dutiful affectionate disposition in such a relation, as far as the safety of our family or our country will admit: to be obliging even toward the evil and the froward, out of respect to the venerable order of nature, where there's no merit in the immediate object. If there be nothing desirable in the conversation of parents, nor hopes of making any amendment of their tempers, yet it is still lovely in a child to give them support, and consult their ease, as far as he can without incouraging them in their vices, or pernicious follies.

How far parental power extends.

V. As the parental power naturally extends to all the means requisite for the rearing and education of children, it must contain several rights over them of an

unuſual kind, in caſes of great exigence. Whatever a parent in tolerable circumſtances expends in the education of his own children, when nothing is declared to the contrary, is indeed juſtly deemed a donation, without a right to demand any reſtitution, except he falls into great diſtreſs; and only under this condition, that he ſhall receive ſupport from them, if he needs it in old age. Nay, from the common intention of parents in their acquiſitions, the children are a ſort of joint proprietors, tho' the parent has the adminiſtration of the whole. Where children indeed have fortunes left them by others, there is no iniquity in a parent's charging the prudent expences made on ſuch children, as a debt on their fortunes; when his own reaſonable eaſe, or the condition of his other children requires ſuch conduct. A parent muſt have a right alſo to commit the care of the education of his children to perſons of better abilities than himſelf, or of more leiſure for it: or of giving them in adoption to others who can make better proviſion for them. Theſe are ordinary parental rights. But in caſes of great ſtraits a parent has a further right of transferring to another his claim of compenſation for the paſt charges he has been at, and of binding the child into any humane ſtate of ſervitude for ſuch a term of years, that his labours may compenſate theſe charges, and thoſe of his annual ſupport during his ſervice; but ever with a right of redemption by himſelf or any friend who would defray theſe charges. This contract is ſometimes neceſſary for the parents ſupport, and

BOOK III. ſometimes a prudent office for the child, by which he is bound, as any minor is, by a prudent deed of his tutor; and his obligation is one of theſe called *quaſi ex contractu*, of which formerly. But as no parent can transfer a greater right over his child than he has himſelf, this can be no foundation for perpetual or hereditary ſlavery. Such a contract is ſo far from an uſeful office, or a *negotium utile geſtum*, that it is manifeſtly iniquitous, and produces no obligation.

Civil Power is on a quite different foundation.

The power of a ſtate over its members is upon a quite different foundation, when numbers are once aſſociated for a common intereſt, where each one is ſecured at a publick expence in the poſſeſſion of all his rights, and enjoys for himſelf and poſterity protection of laws and magiſtrates, is defended by armies, and obtains the innumerable advantages of a civilized life: for theſe extenſive intereſts of multitudes, it may be juſt to compel them to undergo the greateſt dangers, nay to run upon certain death. Minors enjoy the ſame advantages with the aged, and thus are in juſtice ſubjected to the ſtate, previouſly to their own expreſs or tacit conſent; as they have ſhared from their birth of theſe advantages, and in conſideration of them are bound to contribute any reaſonable ſervices they are capable of, toward the preſerving and continuing ſuch beneficent aſſociations: of this, more hereafter. It is however ſcarce juſt or prudent to enlarge the parental powers by civil laws. The powers conſtituted by nature are ſufficient for the purpoſes of education. The parent is but an improper deputy magiſtrate, for the

execution of juſtice over his children, for many obvious reaſons: and granting him a power to kill, expoſe, or ſell his child into perpetual ſlavery, without any demerit of the child's, is a monſtrous iniquity. CHAP. 3.

CHAP. III.

The DUTIES *and* RIGHTS *of* MASTERS *and* SERVANTS.

I. AS ſoon as mankind were conſiderably increaſed in numbers, and the more fertile clear lands occupied, many accidents would occaſion that a great many would have no property, nor any opportunity of employing their labours on goods of their own for their ſupport: and many on the other hand who had much property would need the labours of others, be willing to ſupport them on this account, and give them further compenſation: this would introduce the relation of maſter and ſervant. Whether in the earlieſt ages men entred into ſuch contracts for life, or only for a certain term of years, is not of much conſequence. The rights and duties in this relation, will better appear from the following conſiderations. *The occaſion of this relation.*

1. The labours of any perſon, of tolerable ſtrength and ſagacity are of much more value than his bare maintenance. We ſee that the generality of healthy people can afford a good ſhare of the profits of their labours for the ſupport of a young family, and even for pleaſure and gayety. If a ſervant obliged himſelf *The chief maxims of natural juſtice about this relation.*

BOOK III. by contract to perpetual labours for no other compenſation than his bare maintenance, the contract is plainly unequal and unjuſt; and being of the onerous kind, where equality is profeſſed on both ſides, he has a perfect right to a further compenſation, either in ſome *peculium*, or little ſtock for him and his family, or in a humane maintenance for his family.

2. Such a ſervant, whether for life or a term of years, is to retain all the rights of mankind, valid againſt his maſter, as well as all others, excepting only *that* to his labours, which he has transferred to his maſter: and in lieu of this he has a right to the maintenance as above mentioned, or to the wages agreed on. If by cuſtom maſters aſſume any reaſonable juriſdiction over their domeſticks, not inconſiſtent with their ſafety and happineſs, the ſervant, by voluntarily entring into the family, is deemed to have ſubjected himſelf to this juriſdiction; even as a foreigner who reſides in a ſtate, ſubjects himſelf to the laws of it as far as they relate to foreigners.

3. Where one has not transferred a right to all his labours, but only engaged for work of a certain kind; he is obliged to that work only; and in other reſpects is as free as his maſter. In none of theſe caſes can the maſter transfer his right, or oblige the ſervant to ſerve another, unleſs this was expreſly agreed on in the contract. 'Tis of high conſequence to the ſervant, what ſort of maſter he ſerves. One who conſented to ſerve a perſon of humanity, or who had leſs ſevere work to employ him in, muſt not be deemed

consenting to serve any other person of a different temper, or who may require severer labours.

The foundation of slavery.

4. Men may justly be placed in a much worse condition of servitude, in consequence of damages injuriously done, or of debts incurred, which they have by their gross vices made themselves incapable of discharging. The person whom they have thus injured has a perfect right to compensation by their labours during their lives, if they cannot sooner discharge the claim. A criminal too, by way of punishment, may justly be adjudged to perpetual labours of the severest sort. In these cases, a power is founded solely for the behoof of others, to make all the profit by their labours which they can yield. Whatever humanity may be due to such unhappy servants, as they are still our fellow-creatures, yet the master's power and right being constituted only for his behoof, it is naturally alienable without their consent. But, still, in this worst condition of servitude, neither the criminal, after he has endured any publick punishment which the common safety may require, nor much less the debtor, have lost any of the natural rights of mankind beside that one to their own labours. If they labour as far as they can, they have a right to obtain support. Nay, they have a right to defend themselves by violence against any savage useless tortures, any attempts of maiming them or prostituting them to the lusts of their masters, or forcing them in any worship against their consciences. They can acquire rights by contract or by any legal deed of conveyance by others,

BOOK III. which may be profitable to them in extinguiſhing the debt, or compenſating part or whole of the value of their labours, where the labours are not enjoined as a part of the exemplary puniſhment. In particular, they acquire rights by any deed of the maſters remitting to them any part of their labours.

Liberty too much favoured in ſome nations.

As this ſort of ſlavery has a juſt foundation, ſome nations favour liberty immoderately by never admitting the perpetual ſervitude of any citizen. And yet perhaps no law could be more effectual to promote a general induſtry, and reſtrain ſloth and idleneſs in the lower conditions, than making perpetual ſlavery of this ſort the ordinary puniſhment of ſuch idle vagrants as, after proper admonitions and tryals of temporary ſervitude, cannot be engaged to ſupport themſelves and their families by any uſeful labours. Slavery would alſo be a proper puniſhment for ſuch as by intemperance or other vices ruined themſelves and families, and made them a publick burden. There might be a trial firſt made, according to the Jewiſh cuſtom of ſervitude for ſeven years; and then they might be allowed their liberty, in caſe they had acquired an habit of diligence; but if not, they ſhould be adjudged to ſlavery for life. It might alſo be a more uſeful puniſhment for many other crimes than thoſe commonly appointed.

The Grecian and Roman cuſtoms are quite inexcuſable.

II. As to the notions of ſlavery which obtained among the Grecians and Romans, and other nations of old, they are horridly unjuſt. No damage done or crime committed can change a rational creature

into a piece of goods void of all right, and incapable of acquiring any, or of receiving any injury from the proprietor; unleſs one ſhould maintain that doing uſeleſs miſchief, and creating exceſſive miſery unneceſſarily, can tend to the general good; and occaſion no diminution of the happineſs in the ſyſtem, which is contradictory in the very terms. CHAP. 3.

Captivity in war the uſual occaſion.

Captivity in war was almoſt the only occaſion of introducing this ſlavery; and we ſhall inquire how far any right of the conqueror can entitle him to make captives and their deſcendants perpetual ſlaves, or to detain them perpetually to labour at the pleaſure of others. For as to other miſeries of ſlavery, according to the Grecian and Roman cuſtoms and laws, nothing can juſtify them.

The cuſtom very cruel and imprudent.

Here, firſt, it is amazing, that wiſe and civilized nations, abounding with ſentiments of humanity and virtue on other occaſions, and no ſtrangers to the inconſtant fortune of war, ſhould ever have introduced ſuch cruel cuſtom, which upon many accidents may bear as hard upon their own citizens as upon their enemies, upon thoſe who fought for the juſt cauſe, as well as upon thoſe on the injurious ſide, and may as ſeverely affect the publick-ſpirited and the brave, as the ſelfiſh and the cowardly: Nay, theſe latter generally keep themſelves out of ſuch dangers. Muſt not all the ſentiments of compaſſion and humanity, as well as reflection upon the general intereſt of mankind, diſſuade from ſuch uſage of captives, even tho' it could be vindicated by ſome plea of external right?

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Again, By violent occupation no man can acquire any right unleſs he had a juſt cauſe. Without a juſt cauſe, whatever he takes, he is bound in conſcience to reſtore. An agreement of nations ſeems indeed to have introduced an external right in favour of neutral ſtates and their ſubjects, who by any plauſible title have obtained any of the ſpoils or captives in war, from either of the hoſtile parties, ſo that the old proprietors cannot claim them from the neutral ſtate, upon any pretence of the juſtice of their cauſe. But while the captures remain in poſſeſſion of the captor or his countrymen, if their cauſe was unjuſt, the old proprietors may juſtly retake them; until by ſome treaty or conſent of theirs, or of their governors, by whoſe deeds they are bound, they relinquiſh their claim.

'Tis very unjuſt, where the war was not juſt.

III. But ſuppoſe captives are taken by thoſe who have a juſt cauſe: nothing can be demanded of them in ordinary caſes, but either by way of puniſhment, and ſecurity againſt like offences for the future, or of compenſation of damage. Now perpetual ſlavery cannot be juſtly inflicted on the generality of the ſubjects of a ſtate which engaged in the moſt injurious wars on either of theſe accounts.

Not juſtifiable even in a juſt war.

Firſt. One fifth of the ſubjects never can be guilty when a ſtate makes an unjuſt war. In a pure democracy, where all heads of families vote equally, yet the women, the minors, and the ſervants, have no ſhare in publick counſels; and they are more than four fifths of any people. And how ſeldom are democratick aſſemblies unanimous? in moſt other forms,

not one in an hundred contributes to the injuſtice by any counſel or deed of theirs, or could prevent it. CHAP. 3. The ſubjects pay taxes, which are exacted by law, not knowing to what uſes they are applied. To refuſe them, would occaſion their being extorted by violence, to their own loſs, and would not prevent the war. Grant they knew the war to be unjuſt, their diſſent, or their refuſal of taxes would not prevent it; and if they falſely imagine it juſt, their errors about political matters are often invincible; they follow ſuch ſpecious reaſons as their governors repreſent: and the bare approving an unjuſt action upon falſe information can be no fault in him who has no opportunity of better information. No political union can ſubject a people to puniſhment for that guilt of their rulers which they did not adviſe them to, nor occaſioned by any action or omiſſion contrary to their duty.

Again. The main end of puniſhment, viz. the deterring unjuſt men from like injuries for the future, is not naturally obtained by puniſhing innocent ſubjects. This has very little effect upon wicked princes or governors. The effectual and natural puniſhments would be ſuch as were inflicted on the unjuſt governors themſelves, who are the cauſes of the injuries complained of. No puniſhment is juſt without ſome antecedent guilt in the ſufferer: other evils juſtly inflicted ſometimes on the innocent, come under another notion. *Not fit for the ends of puniſhing.*

As to ſecurity againſt like offences for the future; *Or of future ſecurity.*

BOOK III. those alone are bound to give it in all ordinary cases, who have been criminal, or contributed to the injury by acting or omitting contrary to their duty. And all the security obtained by enslaving the captives and their posterity, can be generally obtained in a much more humane method. They and their goods taken may be detained with the captors, till a just peace is obtained, they may be obliged by their moderate labours for some time to increase the wealth of the injured state, and if they can be convinced of the justice of our cause, they may be settled with us as subjects, enjoying all the natural rights of mankind; nay, be naturalized, by which the same diminution is made of the enemy, and as great accession made to that of our nation, as by their slavery.

Captives seldom bound to compensate damages.

2. As to the second plea, the compensation of damages; none are naturally bound to this, who did not contribute to them, by acting or omitting contrary to their duty, nor received profit by them. Now, this is the case of subjects for the most part, when their rulers are making the most injurious attempts upon their neighbours.

As to that plea, that "he who by any contrivance, "or any goods acquired for his own benefit, or by "any office constituted for that end, does some de- "triment to others, * should either compensate the "damages, or, on the other hand, give up the con- "trivance or goods, and surrender the person who by

* This is the natural foundation of the *actiones noxales et de pauperie* in the civil law ff. 9. t. 1. *Si quadrupes pauperiem* &c.

" abuſe of his office did the damage." This may hold againſt the original citizens who choſe the unjuſt governors, or conſtituted ſuch a plan as naturally excites to injuries, or againſt any citizens who can either reſtrain or turn out their magiſtrates. But even in thoſe caſes, it ſhould be left to the option of the citizens now taken captive or conquered, whether they will quit ſupporting their unjuſt governors, and deliver them up if they can, and enjoy their old liberty; or compenſate all damages, and give proper ſecurity, ſuch as wiſe arbitrators ſhall appoint, againſt future injuries, and retain their governors. †

Whom conquerors ſhould puniſh.

IV. If conquerors had any regard to juſtice, we ſhould oftener ſee them inſiſting on ſuch delivery of the unjuſt governors, and their counſellors, and miniſters, to thoſe they had wronged, and the innocent people left to chuſe either a new form of polity, or better adminiſtrators of the old one. But this plea of compenſation muſt be a vain pretence when 'tis uſed after full compenſation is taken by force, or offered by the party diſtreſſed; as it would generally be offered by any ſtate, rather than the innocent ſubjects ſhould univerſally loſe their perſonal liberty, or the ſtate become a province to the conqueror. Without any of this cruelty full compenſation of damages, and ſufficient ſecurity againſt like injuries, ſuch as prudent arbitrators would appoint, might always be obtained by the victorious. Theſe conſiderations abundantly ſhew how injurious and cruel it muſt be to enſlave the common

† See c. 6. of this book.

BOOK III. subjects of any state, with their posterity, on account of any unjust war their governors had been engaged in.

What equitable pleas for such as bore arms in an unjust war.

As to those who bore arms, whether as common soldiers or inferior officers, but had no share in the publick counsels; they are generally invincibly ignorant of the injustice of their cause. In some states they are compelled by force to inlist; and when they do so voluntarily, 'tis upon a general presumption of being employed only in just causes; and after inlisting it becomes a capital crime to disobey their superiors. When this is the case, it is barbarous to talk of punishing such captives. We have a right to defend ourselves, or prosecute any right of ours which they are obstructing, by any fatal violence against them while they oppose us. But when they are captives, and can hurt us no more, we should remember that they were generally innocent, and that even such as knew the injustice on their own side, and were criminal in bearing arms against us, yet did so, under the strongest temptations, since it was capital not to have obeyed the commands of their superiors. We should consider the common variable fate of war, and that our example in any severity may presently provoke our enemies to give the bravest of our subjects the like treatment; and that such precedents will be followed by unjust conquerors, as well as the just. We may indeed detain such captives, and oblige them to humane temporary labours, to increase our own strength, and weaken the enemy's, 'till just terms of peace be obtained. Or we may settle them as subjects in our own

country: but any more ſevere treatment ſeems contrary to humanity, and the regard we ſhould have to the general good. CHAP. 3.

Some extraordinary caſes.

V. Theſe ſeem the general rules or laws of nature as to captives. There may poſſibly happen ſome ſingular caſes or pleas of neceſſity, to juſtify ſome extraordinary ſteps, beyond theſe above-mentioned. Thus, if there be no other way to prevent or deter a barbarous enemy from the moſt cruel treatment of our fellow-citizens who have fallen into their hands, than by making repriſals on ſuch captives as we have taken: if we can avoid great effuſion of the blood of our fellow-citizens, and bring an unjuſt enemy to reaſon, or deter him from perſiſting in his injurious deſigns, by exerciſing ſome extraordinary ſeverities towards ſome captives, whoſe ſafety the enemy may have much at heart, and continuing theſe ſeverities, till the enemy be brought to reaſonable terms of peace. If we are ſo weakened by the war we have been engaged in, by the injuries of the enemy, that we cannot be preſerved in our independent ſtate, without a conſiderable acceſſion made to our ſtrength, at the expence of the injurious ſtate, ſuch as the labours of many captives, or their tranſplantation into our country, even without their conſent, may make to us: in theſe caſes, ſuch ſevere conduct may be juſtified, when gentler meaſures would be ineffectual.

Hereditary ſlavery always unjuſt.

But without ſuch manifeſt neceſſity, the detaining of captives, eſpecially women and children, in perpetual ſlavery, muſt be moſt unjuſt and inhuman. For,

BOOK III

as we ſhewed formerly *, the children of ſuch as were juſtly enſlaved ſhould be looked upon as free-born, only perhaps as perſons indebted to the value of their neceſſary maintenance. "Had the conqueror, ſay ſome "authors, uſed the utmoſt rights of war, by killing "the parents, the children had not come to life: they "owe therefore their lives and all to the conqueror." But this proves nothing. Conquerors have no right to murder captives in cold blood. And tho' they might with impunity have done ſo, their abſtaining from ſuch wickedneſs gives no right to theirs or their childrens ſervice. At this rate, one would be obliged to become a ſlave to any powerful pyrate or robber who had ſpared his life; or to any generous man who refcued him from ſuch dangers. Princes may thus owe their lives to midwives, ſurgeons, or phyſicians, who might have murdered them with impunity. Are they therefore, with their poſterity, ſubjected to ſlavery? Grant that the parents might have been put to death juſtly, yet their children come into life innocent, they are rational beings of our ſpecies, the workmanſhip of the ſame God in their bodies and their ſouls, of the ſame materials with ourſelves and our children, and endued with like faculties. They incur an early debt for their maintenance; but, as ſoon as that can be diſcharged by their labours, or by the generous interpoſal of any friend, they are as free as any of human race.

On whom the proof is incumbent as to the right.

VI. He who detains another by force in ſlavery, is

* See above, book ii. c. 13. art. 3.

always bound to prove his title. The ſlave ſold or carried into a diſtant country muſt not be obliged to prove a negative, that "he never forfeited his liberty." The violent poſſeſſor muſt in all caſes ſhew his title, eſpecially where the old proprietor is well known. In this caſe, each man is the original proprietor of his own liberty. The proof of his loſing it muſt be incumbent on thoſe who deprive him of it by force. The Jewiſh laws had great regard to juſtice about the ſervitude of Hebrews, founding it only on conſent, or ſome crime or damage, allowing them always a proper redreſs upon any cruel treatment; and fixing a limited time for it, unleſs upon trial the ſervant inclined to prolong it. The laws about foreign ſlaves had alſo many merciful proviſions againſt immoderate ſeverity of the maſters. But under Chriſtianity, whatever lenity was due from an Hebrew toward his countrymen, muſt be due toward all, ſince the diſtinctions of nations are removed as to the point of humanity and mercy, as well as natural right. Nay, ſome of theſe rights granted over foreign ſlaves may juſtly be deemed only ſuch indulgences as thoſe of polygamy and divorces, granting only external impunity in ſuch practices, and not ſufficient vindication of them in conſcience.

The duties of this relation in its ſeveral kinds may eaſily appear from the nature and cauſes of it. The ſervant is bound to fidelity, and willing ſervice, as in the ſight of God, by whoſe providence this lot is appointed to him; and the maſter to mercy and lenity,

BOOK III. as toward a fellow-creature in leſs fortunate circumſtances, who yet has the like affections, and is capable of the like virtues, and happineſs or miſery with himſelf; and to pay faithfully his wages, and perform any other promiſes he has made to him.

CHAP. IV.

The MOTIVES *to conſtitute* CIVIL GOVERNMENT.

Civil power from the imperfection and depravity of men.

I. IF all mankind were perfectly wiſe and good, diſcerning all the proper means of promoting the general happineſs of their race, and inclined to concur in them, nothing further would be wanting; no other obligations or bonds than thoſe of their own virtue and wiſdom. The neceſſity of civil power therefore muſt ariſe either from the imperfection or depravity of men or both.

How men are naturally ſociable and political.

When many of the antients ſpeak of man as a ſpecies * naturally fit for civil ſociety, they do not mean that men as immediately deſire a political union, or a ſtate of civil ſubjection to laws, as they deſire the free ſociety of others in natural liberty, or as they deſire marriage and offſpring, from immediate inſtincts. 'Tis never for itſelf agreeable to any one to have his actions ſubject to the direction of others, or that they ſhould have any power over his goods or his life. Men muſt have firſt obſerved ſome dangers or miſeries at-

* Thus Ariſtotle and Plato often call man ζωὸν πολιτικὸν, but Ariſtotle owns that he is συνδυαστικὸν μᾶλλον ἢ πολιτικὸν. *Nicom.* l. viii. c. 12.

tending a ſtate of anarchy to be much greater, than any inconveniencies to be feared from ſubmitting their affairs along with others to the direction of certain governors or councils concerned in the ſafety of all: and then they would begin to deſire a political conſtitution for their own ſafety and advantage, as well as for the general good. As men are naturally endued with reaſon, caution, and ſagacity; and civil government, or ſome ſort of political union muſt appear, in the preſent ſtate of our nature, the neceſſary means of ſafety and proſperity to themſelves and others, they muſt naturally deſire it in this view; and nature has endued them with active powers and underſtanding for performing all political offices. CHAP. 4.

'Tis alſo natural to men to eſteem and admire any ſingular abilities diſcerned in others; ſuch as courage, wiſdom, humanity, juſtice, publick ſpirit. They naturally confide in perſons poſſeſſed of ſuch diſpoſitions and love them. They are willing to commit their important intereſts to their direction, and have a zeal to promote them to honourable offices and powers of managing the common concerns of ſociety.

The evils in anarchy partly from weakneſs, partly from vice.

II. The evils to be feared in anarchy reſult plainly from the weakneſs of men, even of thoſe who have no unjuſt intentions, and partly from the unjuſt and corrupt diſpoſitions which may ariſe in many. 'Tis wrong to aſſert that there is no occaſion for civil polity except from human wickedneſs. The imperfections of thoſe who in the main are juſt and good may require it.

BOOK III.

Contentions from different opinions of right.

1. Among good men there may be different opinions about the point of right. Thoſe who intend no injuſtice, nay, who reſolve to act the juſt part on all occaſions, yet may be miſtaken and too poſitive under the ſecret influence of ſelf-intereſt, and may be ſuſpicious of the artifices of others to influence any arbitrators they could chooſe, and confident of their own ſtrength may decline arbitration and venture upon the hazards of violence.

Wiſe rulers can better promote the good of all.

Again the more ingenious may invent many uſeful contrivances for a common intereſt, and yet cannot ſatisfy the more ſtupid or ſuch as are prejudiced, about the expediency of their deſigns; by reaſon of their weakneſs, or ſuſpicions of the hurtful artifices of the contrivers. 'Tis well known how hard it is to make the vulgar quit their own cuſtoms for ſuch as are far better in agriculture or mechanick arts. And how much more difficult muſt it be to obtain their concurrence in any great and noble deſigns of diſtant advantage to whole nations, when they coſt much preſent labour and expence. As there are in our ſpecies men of ſuperior genius and penetration, and of more extenſive views, nature points them out as fit to direct the actions of the multitude for the general good, upon proper ſecurity given by them for their uſing faithfully the powers committed to them.

Dangers from the vices of men require civil power.

2. But the corruption of mankind makes civil polity appear more neceſſary. As many are covetous, or ambitious, and unjuſt and oppreſſive when they have power; and are more moved by preſent proſpects of

gain, than deterred by any moral principles or any distant prospects of future evils to redound to them from their injuries; a remedy must be provided against the evil dispositions of such men; a remedy that is present and sensible, and no other can occur so effectual as a civil power with force sufficient to maintain justice and inflict present punishment on such as are injurious. Tho' a majority or even each individual in a great multitude were corrupt and unjust, yet such men united will seldom enact unjust laws. There's a sense of right and wrong in all, with a natural indignation against injustice. I may, for my own pleasure or gain or at the instigation of some passion, counteract my sense of justice; but I shall be abhorred for this injustice by others who gain nothing by it. Another may for his gain in like manner counteract the rules of justice, but I and all the rest shall abhor him for it. The like shall be the dispositions of all, and thus they never will concur to enact unjust laws, tho' not one of them had such a stable principle of justice as would make him adhere to it in opposition to any high interest or passion of his own. Each one too may dread mischief to himself from the injustice of others; and may fear their high resentment on account of the injuries he may attempt against his neighbours. A counsel therefore of many will never agree to allow the injustice of any of its members against others of them. As none approve injustice but they who gain by it, no avowed injustice toward any of the members will be allowed by publick authority, except

BOOK III. where the whole power is committed to one, who may possibly allow himself in injustice toward his subjects, or where it is committed to a few, who may form themselves into a separate cabal from the people, and oppress the people avowedly, while they maintain justice among themselves. Against these two dangers precaution must be taken by the plan of power that is to be settled.

No such security in anarchy.

'Tis true that in a state of anarchy there is the same natural indignation against injustice; and that even in bad men, when they do not gain by it; and they sometimes as well as good men, are prone to assist the injured. But in all dangerous efforts, whether in prosecution of right; or in repelling injuries, through human imperfection, there can seldom be good success without government and an union of wills. Some honest men from cowardice may decline their part in such dangerous services: others of sufficient courage may differ about the measures which are most prudent; and through opiniatry, pride, or mistake, may stand obstinate against measures proposed by others. Wise men by considering or experiencing these dangers, and representing them fully to others, have probably engaged great numbers to concur in the only remedy against them, viz. the constituting some men of approved wisdom and justice the arbitrators of all their differences, and the directors in all measures necessary for the safety and prosperity of the whole; arming these rulers also with sufficient power to enforce their decisions and orders upon such as are refractory, by

engaging to employ each one his own force according to their direction. CHAP. 4.

Bad plans of power are alſo dangerous.

III. Great miſchiefs no doubt may often ariſe from plans of polity raſhly and incautiouſly conſtituted when power is intruſted in bad hands. And yet an imperfect form of polity, and much more a very wiſe one, has innumerable advantages above anarchy. The general happineſs muſt be more effectually promoted, and juſtice better adminiſtred, by the arbitration and council of wiſe unbyaſſed men, who can enforce their deſires upon the refractory, and make them concur in any good deſign; than if all men, good or bad, wiſe or fooliſh, followed their own ſeparate councils. And in all forms of polity this is ever profeſſed as the intention of the inſtitutors that the power ſhould be lodged with the wiſe and juſt; tho' the precaution taken for it is often very improper and inſufficient. Where this intention is obtained, nothing can be awanting for the greateſt happineſs in this world which human means can procure; as a people ſhall be wiſely defended from external dangers; injuries among themſelves ſhall be reſtrained; juſtice prudently adminiſtred; and all arts cultivated for the improvement of life; and all orders, the weak and imprudent as well as the wiſe, the ſelfiſh as well as the generous, engaged or compelled to contribute toward the general intereſt: and wiſe laws will civilize the manners and even improve the tempers of a people to virtue. How imperfectly theſe ends can be obtained in the moſt to-

BOOK III. lerable ſtate of anarchy we can ſuppoſe, muſt at the firſt view be manifeſt.

Bad polity may be as pernicious as anarchy, this no reproach to civil polity.

But we muſt not hence conclude, as ſome have raſhly done, that the very worſt ſort of polity is better than the beſt condition of anarchy. 'Tis true that in the very worſt polities there are ſome good laws, and juſtice is often well adminiſtred in caſes where the intereſts of the governors or their favourites are not concerned, and the whole body is often protected from external invaſions by united force and council: which are advantages not to be hoped for indeed in the worſt condition of anarchy. But in a ſtate of anarchy, where the manners of a neighbourhood are not yet corrupted by eaſe, wealth, and luxury, there might be much happineſs, and ſimplicity, and innocence of manners, much zeal for mutual defence, and for preſerving juſtice toward each other, and even ſome conſiderable improvements in arts. And in bad plans of polity, by the tyranny, ambition, and luſts of the governors, the great powers committed for the publick good may be employed in a general oppreſſion of the people in rapine and violence, and the bearing down every thing free and generous in their ſentiments. 'Tis enough on this ſubject that all the advantages deſirable, or that could be hoped for in a ſtate of anarchy, ſhall be much more effectually obtained and ſecured by a good plan of polity. That corrupt forms of polity may do great miſchief, is no objection againſt a civil ſtate in general, but rather recommends it; as the corruptions of the beſt things may be moſt pernicious.

'Tis the buſineſs of rational agents therefore to exerciſe their ſagacity in contriving the beſt plans of civil power, and ſuch amendments of thoſe already conſtituted as are requiſite for obtaining the ends of it; and not to reject the moſt effectual means of promoting the general good, becauſe they may be perverted by the folly of men into engines of miſchief. A ſtate of anarchy has not of late been experienced for any conſiderable time. Thoſe who tryed it of old, found it perhaps tolerable while ſimplicity of manners continued, but when corruptions encreaſed they found it neceſſary to contrive civil polity. And in the worſt plans of it, many evils are prevented, and juſtice often maintained, and the people protected from injuries. Inſtances of this kind, where the civil power is uſeful, are far more numerous than thoſe in which it is abuſed; which would make one heſitate in allowing that the imperfect and fooliſh plans of power which have appeared in the world have in the whole done more miſchief than good, occaſioned more evils than would have enſued from as long a continuance of anarchy. CHAP. 4.

The cauſes of miſtakes in this point.

The natural worth of civil power is often overlooked; we are not much ſtruck with the good it does in a general protection and adminiſtration of juſtice. This is only what we ordinarily expect from it. But every perverſion of it, in any flagrant acts of tyranny and oppreſſion, deeply affects our minds, and is long remembred with indignation. Even as in the adminiſtration of nature, and in the general condition of human life,

BOOK III. many imagine a ſuperiority of evil from their being much moved with the ſeveral calamities of men thro' their natural compaſſion; while they overlook the conſtant and ordinarily expected train of enjoyments and bleſſings conferred on mankind. This however ſhould not hinder men, when opportunities offer, and there is any hope of ſucceſs, to attempt, even by ſuch violence as may occaſion ſome temporary anarchy, to obtain ſuch amendments of any fooliſh concerted plans of polity as may be neceſſary to prevent the perverſion of it, and may procure greater good than what overballances theſe temporary inconveniencies in the violent change.

What ſort of union neceſſary in a ſtate.

IV. As the grand inducements to conſtitute civil power were "the obtaining defence againſt the injuries to be feared from men, and the promoting the general happineſs by the concurring force of multitudes." Theſe ends cannot be obtained unleſs great numbers are either brought to agree or unite in their inward ſentiments and inclinations, or, if that be impoſſible, are brought to act as if they thus agreed: for otherways the force of the whole body cannot be employed for theſe purpoſes. Now the latter ſort of agreement or union may be obtained if a "multitude engages to ſubmit their actions and force to be directed by one perſon or council, for the general intereſt, and particularly for compelling any who may thereafter prove diſobedient, to return to his obedience to this perſon or council." When thus a large body of men are united under one government

they make one body politick where the will of the ruling perſon or council is, as to external effect, decerned to be the will of the whole. CHAP. 4.

The natural end and ſole purpoſe of all civil power, as it is acknowledged on all ſides, where men retain any remembrance of their dignity as rational creatures, is the general good of the whole body, in which the governors themſelves are included as a part, and that a more or leſs important part according to their abilities, and inclination to promote the general good. All *civil* government in this differs eſſentially from the *deſpotiſm* of a maſter over ſlaves, that this latter is underſtood to be a power for the advantage of the governor. Deſpotick, and civil or political, are contrary terms.

The ſole end of civil power;' tis naturally oppoſite to that of deſpotick.

That civil power alone can be juſtly aſſumed or claimed by any governor which is neceſſary or conducive to the proſperity of the whole body united; what is not ſo is unjuſt upon whatever pretence it is aſſumed: as 'tis plain, from the general principles of morality, that the pleaſures or intereſts of one, or of a few, muſt always be ſubordinated to the more extenſive intereſts of great numbers. Any contract or conſent conveying uſeleſs or pernicious powers is invalid, as being founded on an error about the nature of the thing conveyed, and its tendency to the end profeſſed and acknowledged on both ſides. The ſubject profeſſes to convey powers only as they are conceived uſeful to the whole body; and the governor profeſſes

No civil power is juſt which tends not to the good of the ſtate.

BOOK III. to demand no other. As to other claims of power they ſhall be conſidered hereafter.

There are always juſt motives to a civil union rather than a ſtate of anarchy.

V. Whatever love men have to full liberty, whatever contingent inconveniencies they may foreſee from ſubjection to civil power, they may ſtill have ſufficient motives to ſubmit to any tolerably contrived plan of polity. Some authors have given an unnatural account of the burdens impoſed by a political ſtate; repreſenting only the caſual dangers men are expoſed to ſometimes in civil polity, as if theſe were ſome conſtant misfortunes in that ſtate, and peculiar to it, without conſidering that people are leſs expoſed to them in polity than in anarchy.* But then, to engage men to ſubmit to theſe hardſhips, they aggravate as much as poſſible the miſchiefs of anarchy even far beyond the truth. In polity, governors have a power of life and death, ſay they, over ſuch as they judge to be guilty of crimes. But this is no more power than any of our fellows will aſſume over us in natural liberty; and our proſpect of a fair tryal and juſtice is much greater under a civil judge. The magiſtrate claims another power over life, in compelling men into the moſt dangerous ſervices for the common defence. But ſuch dangers we muſt have as frequently been expoſed to alone, with voluntary aſſiſtants ſuch as we could find, in defending ourſelves in a ſtate of anarchy. The magiſtrate claims a power over our goods, and exacts ſome part of them in tributes, for ſome general intereſts of the whole body. But then a good magiſtrate

* There is too much of this in Puffendorf as well as in Hobbs.

employs these tributes for increasing and defending the acquisitions of the whole body; and in anarchy each one must have been at greater expences for the like purposes, and not with such prospects of success. If each one in polity is obliged to a great many peculiar expensive or laborious duties for the benefit of the whole body or of particular fellow-citizens, each one shares in the advantages of like services performed by others. And thus any tolerable state of civil polity must appear inviting and eligible to all, even from self-interest, as well as from our more generous dispositions; as 'tis plain that an eminently wise and good man, or a council of a few of like character, directing the conduct of a large body of men, will much more effectually promote the interest of all, than the same number could do while each one followed his own measures. These considerations fully represented may have engaged multitudes to unite voluntarily into one body, and to be directed by one council.

VI. Nor is there any opposition to this doctrine in what some ingenious men alledge that "the first po- "litical unions have been formed with the most un- "just designs; that bad men have first thus united and "founded cities, with a view to plunder and oppress "their neighbours." Grant that this were true, tho' 'tis not certain even about the first states, and much less so about the original of all states in succeeding ages; it only proves that bad men at first fell upon this contrivance, or first discovered that a political union was of great consequence to the defence and security

'Tis little matter what views first made men unite.

BOOK III. of a large body, and to the increaſe of all their advantages. The apprehenſion ſuch men might have been under of the juſt reſentments of their fellow-creatures, incurred by their injuries, may have firſt rouſed their invention. Whereas good men, who had no juſt cauſes of fear, might not think ſo ſoon of exerciſing their inventions in the arts of defence. But as ſoon as any political bodies were formed; all the ſeparate families in the adjacent country muſt ſoon ſee the neceſſity of like aſſociations, and that from the motives already mentioned.

Men not at firſt compelled to unite without rational motives.

To alledge that men were firſt compelled by force to ſubmit to civil power, muſt be very incredible; as no one man could be ſuppoſed to have ſtrength or force ſufficient to compel conſiderable numbers into ſuch ſubmiſſion: and if he had the aſſiſtance of others in this compulſion, theſe others muſt have been previouſly ſubjected to his civil power: and thus a political union muſt have been ſubſiſting before any conſiderable force could have been uſed to compel men into ſubjection. 'Tis true we find that in earlier ages ſome heads of families had very numerous trains of domeſticks of one ſort or other. But we are not to regard names in this matter, but the real powers. Such heads of families have had the powers of civil governors. And men have been invited into their families, or little ſtates, by ſuch motives as are already alledged. But, what may ſuperſede many of theſe debates as to our preſent deſign; we are inquiring into the juſt and wiſe motives to enter into civil polity, and the ways

it can be juſtly conſtituted; and not into points of hiſtory about facts. If in fact the originals of many governments have been very infamous and unjuſt; this may abate the pride of thoſe poor mortals, who having got into poſſeſſion of power firſt founded by the villanous acts of their anceſtors preying upon the weakneſs, the credulity, the mutual contentions, or the ſuperſtitions of their fellows, have their imaginations ſwelled with notions of ſome ſacred dignity or divinity in their ſtation, and rights of government, and would impoſe the ſame notions upon others, who are far ſuperior to them in every worthy quality. CHAP. 5.

CHAP. V.

The natural METHOD *of conſtituting* CIVIL GOVERNMENT, *and the eſſential Parts of it.*

Civil power founded on ſome conſent or convention.

I. THE extent and ends of civil power ſhew it to be quite different from the parental, tho' the affections of good magiſtrates ſhould reſemble thoſe of parents, in purſuing conſtantly the good of the ſubjects; and hence ſuch governors obtain the moſt honourable name of *fathers of their people*. But parental power is founded on a peculiar natural affection, and the want of reaſon in their children; it gradually diminiſhes as their reaſon advances, and ceaſes when it is come to maturity. The civil power is over the adult, and is deſtined to perpetuity, nor is any prince the natural parent of his people. Mere violence, or

BOOK III. ſuperior ſtrength, can give no right. When therefore God has not by ſupernatural revelation named governors, and ſpecially appointed the quantity of power to be committed to them, (which never was the caſe in any nation) the extent of their rights, and of the obligations of ſubjects, muſt be determined by the ends of the political union, or by ſome original contract. The only natural method of conſtituting or continuing of civil power muſt be ſome deed or convention of men. And as no rational beings, who have any fore-thought or attention to their own intereſts, or thoſe of perſons dear to them, can be happy while their important rights are not tolerably ſecured to them, but depend on the variable, or capricious, or inſolent wills of others; and as the general happineſs is the ſupreme end of all political union; and ſome tendency to it neceſſary to the juſtice of any inſtitution; no government or power claimed can be juſt which is not either ſettled upon the conſent of the people, or ſo calculated, that upon a little experience of it, they ſhall heartily conſent to it, as ſufficiently ſecuring to them all their valuable intereſts. If through ſtupidity, levity of genius, or an abject ſpirit and long cuſtom many acquieſce in other ſorts of politicks, where there is no ſuch ſecurity; this will not prove the juſtice of the powers aſſumed; ſince they ſeem already to have had the very worſt effects upon the publick, by debaſing the ſpirits of a people, and excluding every thing wiſe and manly, and all the moſt rational ſatisfactions of life.

Three regular deeds in forming a ſtate.

II. Civil power is moſt naturally founded by theſe three different acts of a whole people. 1. An agreement or contract of each one with all the reſt, that they will unite into one ſociety or body, to be governed in all their common intereſts by one council. 2. A decree or deſignation, made by the whole people, of the form or plan of power, and of the perſons to be intruſted with it. 3. A mutual agreement or contract between the governors thus conſtituted and the people, the former obliging themſelves to a faithful adminiſtration of the powers veſted in them for the common intereſt, and the later obliging themſelves to obedience.

Where power is juſt there is ſomething equivalent to theſe deeds.

Tho' 'tis not probable that in the conſtitution of the ſeveral ſtates men have generally taken theſe three regular ſteps; yet 'tis plain that in every juſt conſtitution of power there is ſome ſuch tranſaction as implicitly contains the whole force of all the three. If a people dreading injuries from each other, or from ſome foreign force, agree by one deed to conſtitute ſome wiſe, juſt, and brave man for their monarch; they certainly alſo agree with each other to unite into one body to be governed by him. And he by accepting this office, which all know is deſigned for the good of the whole body, and is conferred only for this purpoſe, implicitly engages for a faithful execution of it for this purpoſe: and the people expreſly engage for obedience. The ſame is the caſe in conſtituting a ſenate. And even in the founding a democracy there is always ſome deed equivalent to all theſe three. The

BOOK III. first contract is expreſſed, and ſo is the intermediate decree; as all agree to be governed by what is determined in the popular aſſembly or by the majority. And the third ſtep is obviouſly implied; as they all profeſs to unite for the common ſafety and intereſt. Each one therefore binds himſelf to conſult the general ſafety and intereſt in the ſuffrages he gives in the popular aſſembly, and thus promiſes on his part to govern well; and each one is underſtood to bind himſelf to obedience to the decrees of this aſſembly. The ſame deeds are either evidently expreſſed or implied when any perſons voluntarily join themſelves to a ſtate already conſtituted, and are received as citizens. They agree to unite into the body, they implicitly conſent to the decree about the form, and receiving protection and all political advantages, they promiſe obedience.

How poſterity are bound by theſe deeds.

III. Theſe tranſactions ſhew abundantly how this political relation and the enſuing obligations may naturally ariſe. But the manner in which they bind poſterity is not ſo obvious. And yet all ſtates look upon the deſcendants of ſubjects to be in the ſame political relation, and under the ſame obligations with their parents; tho' minors are not decerned capable of conſenting, and therefore no tacit conſent to be preſumed: nor would one be free from theſe obligations, tho' his firſt act, when he came to maturity, were declaring his diſſent, or entering into a conſpiracy with a foreign power againſt the ſtate in which he was born. To explain this point let us obſerve.

1. First, that as to any hostile attempts unjustly made by any persons, immediately upon their attaining to maturity, the state has undoubted right both of defending itself against them, and punishing the authors of them, be they its subjects or not. Indeed all states treat minors on such occasions as their subjects, and that justly; for

2. The parent in uniting with others in this political body stipulates protection, and the advantages of a civilized life, not only for himself but for his family, and this in any tolerably constituted states is a *negotium utile gestum*, or a transaction most beneficial for them. And as during minority they have enjoyed these valuable and necessary advantages, they are naturally bound to all those terms, which could reasonably have been demanded in consideration of their sharing such advantages. Now no terms are more reasonable than these, that they should continue to strengthen and preserve this association to which they are so much indebted, and not desert it in time of danger, or at any time without reasonable compensation for the advantages they enjoyed. Nor could any such associations be safe if it were left entirely free to all as they came to maturity, upon any caprice, to disunite themselves from them, without any compensation.

3. And further. All such as derive any inheritances, especially lands, from their ancestors, may be under a further bond; as the ancestor may have justly subjected these lands to any wisely constituted civil

power, ſo that no perſon ſhould have a right to hold them unleſs he alſo ſubjected himſelf to this power, and became a member of this political body. 'Tis abundantly obvious, that no ſociety could be ſafe unleſs its whole territory were under this burden; ſo that no perſon diſunited from the ſtate could hold lands within it, into which he might introduce foreign force, or which he might make a refuge to all criminals and conſpirators. Such therefore as claim theſe lands from their anceſtors muſt take them under that bond of civil ſubjection conſtituted by their anceſtors; unleſs the civil polity be ſo contrary to nature, and the intereſt of mankind, that the iniquity of the contract, made by the anceſtor, would have afforded to him a juſt exception to its obligation, as well as to his deſcendants.

4. But when a ſtate is in no preſent danger, it ſeems contrary to humanity and juſtice to make it a trap to its ſubjects, ſo as not to allow them, upon any rational proſpect of advantage to themſelves, to leave it, and unite themſelves to any other body politick, provided that they ſell their lands to ſome remaining ſubject, and make compenſation for any advantages they derived from the ſtate at its expence. As to this compenſation, it is indeed generally made by all ſubjects who have not enjoyed ſome ſpecial favours, by their contributing annually during their reſidence in it toward the publick expence; as all men do, even minors, who either pay taxes on lands or other goods; or conſume goods upon which cuſtoms or duties are

paid. Compulſory methods of detaining ſubjects, where there is no publick danger, are ſeldom juſt, and never thought neceſſary, except in ſome wretched and iniquitous political conſtitutions. But ſuch as continue after they are adult, and ſhare the protection, and other advantages of ſubjects, are indeed * juſtly deemed to have conſented, and to be under the ſame obligations with the old citizens who firſt formed the polity. But they have alſo the ſame juſt exceptions againſt any thing fraudulent in the original contract, and the exception ariſing from error in the eſſential purpoſe of it. Of which more hereafter. CHAP. 5.

States may be juſtly formed without previous conſent.

IV. From the ſupreme notion of juſtice or right it muſt appear that however conſent is the natural method of forming bodies politick or of conveying civil power; yet if any prudent legiſlator, armed with ſufficient power, can ſettle a plan of polity, truly effectual for the general good, among a ſtupid prejudiced people, at preſent unwilling to receive it; when yet there is all rational ground of concluding, that upon a ſhort tryal they will heartily conſent to it; he acts with perfect juſtice, tho' in an extraordinary manner; ſince this conduct muſt in the whole tend to greater good than leaving a people to be made miſerable by their own ſtupid and pernicious prejudices. But common ſenſe at once ſhews that abſolute hereditary monarchy cannot be ſettléd upon this pretence. As it can never tend to good to have all the intereſts of

* This is rather an obligation *quaſi ex contractu* than a tacit, tho' both may often be pleaded againſt them.

BOOK III. thouſands or millions ſubjected to the will or humour of one of their fellows, as ſubject to vice and folly as any of them, nay more expoſed to it by the unbounded power committed to him, and the pride, and flattery which always attends that elevation.

Conſent not always obligatory.

And on the other hand; if the majority of a raſh multitude have conſented to a pernicious plan; and afterwards find its deſtructive tendency; as they now ſee that they erred in the eſſential ſubject of the contract; taking that plan to tend to their good, which they find has the moſt oppoſite tendency; they certainly have a juſt exception againſt the contract, and are free from its obligation. They may inſiſt upon a new model of polity: nor can their former governors have any plea for compenſation of damages; as the error was as faulty in them as it was in the people. They are not indeed generally damaged by the change. They may inſiſt to be placed in as good circumſtances of fortune as their families were before they were raiſed to this civil power; and a people may be bound to comply with this demand, when it is conſiſtent with their ſafety; but if it is not, they are not bound to ſuffer any immoderate or dangerous power, which may be employed for enſlaving them, to remain in any one's hands; much leſs in thoſe who had, by an abuſe of power in oppreſſing them, forfeited their right. Where a people is in no ſuch danger, it may be the humane part to reſtore to their depoſed rulers their whole antient fortunes, or even to enlarge them, that they may ſubſiſt in a ſtation ſome way near to that dignity to

which the raſh deed of the people had raiſed them, and enured their minds. CHAP. 5.

V. When numbers of men are thus united into ſocieties under one government for a common intereſt, theſe ſocieties are naturally conceived as one perſon, having their ſeveral rights and obligations, diſtinct from thoſe of the individual members of them. Thus a ſociety may have property in goods, and other rights, about which no individual member has any right to tranſact, without commiſſion from the whole, or thoſe whom the whole have entruſted with the management of them. The ſociety may incur debts, and other obligations, to be diſcharged out of the publick ſtock or goods, and not out of the private fortunes of the members. The ſociety as one perſon may be bound by contracts, and by almoſt all theſe cauſes of obligation which bind individuals, ſuch as theſe *quaſi ex contractu* and from damage or injury done. And in general, the common laws of nature, which bind individuals, bind alſo ſocieties, as to abſtaining from injuries, either to individuals not in the ſociety, or to other ſocieties, as to faith in contracts, as to the rights of violent defence and proſecution, and as to caſes of extraordinary neceſſity. For as the perſons who unite in the ſeveral ſocieties were antecedently in natural liberty and equality; the ſeveral ſocieties formed by ſuch perſons are with reſpect to each other in the ſame ſtate of natural liberty; and almoſt all the ſame general rules ſhewing what conduct is humane and conducive to the general good from individuals toward

A people becomes as one moral perſon with rights and obligations.

BOOK III. individuals, hold alſo as to the conduct of one ſociety toward another. So that the law of nations, as far as this term denotes a ſyſtem of obligatory rules, is very much the ſame with the laws of nature in reſpect of individuals. As to ſmaller ſocieties formed within a greater, by men previouſly ſubject to the greater, they are alſo deemed as moral perſons, but not in natural liberty; having all their actions cogniſable by the common power which preſides in the greater ſociety, and limited by its laws. There are indeed ſome rules diſtinct from the law of nature, or the neceſſary and univerſally obligatory laws of nations, founded on frequent cuſtom and tacit convention, of which we ſhall treat hereafter.

The law of nations much the ſame with the law of nature.

V. The ſeveral powers which muſt be conveyed to governors in civil polity are commonly divided into the * *greater civil powers*, which are alſo called the *eſſential parts* of ſupreme power; and the †leſſer powers, ſuch as are not eſſential to civil polity.

The neceſſary civil powers.

The eſſential parts are ſometimes ſubdivided into the ‡ *internal*, or ſuch as are to be exerciſed among the ſubjects within the ſociety itſelf; and the *tranſient* or *external*, ſuch as are exerciſed toward foreign nations, or different and independent ſtates. As the deſign of civil power is both to promote peace and happineſs, with an undiſturbed enjoyment of all their rights, to the ſubjects, by a good order at home, and to defend the whole body and all its members from

* *Jura majeſtatis majora.* † *Jura majeſtatis minora.* ‡ *Jura imperii immanentia vel tranſeuntia.*

any foreign injuries; and to procure them any advan- CHAP. 5.
tages that may be obtained by a prudent conduct to-
ward foreigners.

The powers to be exerciſed within the ſociety are *The legiſlative.*
theſe, 1. That of directing the actions of the ſubjects for the common good by laws requiring and rewarding whatever is requiſite for this end, and prohibiting the contrary by penalties; determining and limiting more preciſely the ſeveral rights of men, appointing proper methods for transferring or conveying them, as the general intereſt may require, and even limiting their uſe of them for the ſame general purpoſe.

2. Another power of the ſame claſs is that of ap- *The levying of taxes.*
pointing in what manner and what proportion each one ſhall contribute toward the publick expences out of his private fortune by paying taxes, tribute, or cuſtoms, as the ſtate of the people will admit. Theſe two branches of power are commonly called the legiſlative.

3. The power of juriſdiction civil and criminal in *The executive and creating of magiſtrates.*
deciding all controverſies among ſubjects about their rights by applying the general laws to them, and executing the penalties of the laws upon ſuch as are guilty of crimes which diſturb the peace of the ſtate. And for this purpoſe appointing proper courts of juſtice, and judges civil and criminal, and inferior magiſtrates and officers to take care of the proper execution both of the ordinary laws and of the ſpecial

BOOK III. orders of ſtate given by the ſupreme governors: this is ordinarily called the executive power.

The right of making war, and treaties for peace or commerce.

4. The powers to be exerciſed toward foreigners are theſe two; the firſt, that of making war for defence of the ſtate, and for this purpoſe arming and training the ſubjects to military ſervice, and appointing proper officers to conduct them. And the ſecond, that of making treaties, whether ſuch as fix the terms of peace after a war, or ſuch as may procure allies and confederates to aſſiſt in it, or ſuch as without any view to war may procure or confirm to a ſtate and its ſubjects any other advantages, by commerce, hoſpitality, or improvement in arts: and for this purpoſe the power and right of ſending ambaſſadors or deputies to concert ſuch treaties with thoſe of other nations. All theſe powers ſome authors include under one general name, though ſcarce expreſſive enough of them, the * *federative*, including the power of war as well as peace.

Some extraordinary powers are neceſſary.

VI. Theſe powers muſt neceſſarily be committed to governors in every civil ſtate, and they hold them in that extent which the original conſtitution or the fundamental laws have appointed. But, as we ſhewed that ſome extraordinary caſes of neceſſity give ſometimes to private perſons in natural liberty a right to recede from theſe laws which bind them in all ordinary caſes: 'tis the ſame way with the governors of ſtates, that in extraordinary caſes they muſt have ſome

* As Mr. Locke explains theſe three terms the legiſlative, executive, and federative, all the powers mentioned by Ariſtotle, Grotius, Puffendorf, and others, may be included under them. Theſe diviſions are of no great importance.

extraordinary powers, beyond the common limits of the law, when theſe powers are neceſſary for the general ſafety, or for ſome very important advantage to the publick. * Such powers are in every ſtate, even in thoſe where the laws moſt rigidly ſecure to each ſubject his liberty and property, and extend over the labours and goods of the ſubjects in great exigences, eſpecially in thoſe of war. Thus the lands of any ſubject may juſtly be taken by the ſtate when they are neceſſary for fortifying ſome important harbour, or city, or narrow paſs. The ſhips of ſubjects may be taken for tranſporting of forces, ſo may their proviſions too or military ſtores whether they agree to part with them or not. And, as we ſhewed in the caſes of neceſſity, which may juſtify ſome ſingular ſteps taken by private perſons, that one who uſes this plea for his own behoof is always obliged to compenſate damages done to others; much more is a ſtate obliged to compenſate, out of the publick ſtock, to any of its ſubjects whatever loſs he ſuſtains, beyond the ſhare he ſhould have borne along with the reſt of his fellow-ſubjects, by any ſuch extraordinary ſteps neceſſary for the publick good. Such extraordinary rights extend over life as well as property. CHAP. 5.

VII. The ſmaller civil powers commonly veſted in the ſupreme governors are not of ſuch neceſſity to civil polity; ſome of them may be awanting altogether in a ſtate, or may remain in the whole body, and not *The ſmaller civil powers.*

* Theſe powers ſome call *dominium eminens*; others more properly the *jus imperii eminens*, as they are not confined to the matters of property only.

BOOK III. be committed to any magiſtrate or council, without any great detriment. Such as thoſe of claiming all fines and forfeitures for the ſupport of perſons in ſupreme power; the right to all wrecks or valuable goods found when the proprietor is unknown, and to certain ſorts of mines. The rights or powers of conferring dignity or honours, of coining money, of legitimating children, of pardoning perſons condemned, or changing the puniſhment; of giving protections to debtors, and ſuch like. Theſe are generally veſted in the prince in all monarchick governments, and in the ſenate, or in ſome preſident of it, in the ariſtocratical; and by them deputed to others.

All independent ſtates are in natural liberty in reſpect of others.

VIII. Political bodies, whether great or ſmall, if they are conſtituted by a people formerly independent and under no civil ſubjection, or by thoſe who juſtly claim independency from any civil power they were formerly ſubject to, have the civil ſupremacy in themſelves; and are in a ſtate of equal right and liberty with reſpect to all other ſtates whether great or ſmall. No regard is to be had in this matter to names; whether the politick body be called a kingdom, an empire, a principality, a dukedom, a country, a republick, or free town. If it can exerciſe juſtly all the eſſential parts of civil power within itſelf, independently of any other perſon or body politick; and neither of them has any right to reſcind or make void its actions; it has the civil ſupremacy how ſmall ſoever its territory be, or the number of its people; and has all the rights of an independent ſtate.

Independency not deſtroyed by confederacies.

This independency of ſtates, and their being diſtinct politick bodies from each other, is not obſtructed by any alliances or confederacies whatſoever about exerciſing jointly any parts of the ſupreme power, ſuch as thoſe of peace and war, in leagues offenſive and defenſive. Two ſtates, notwithſtanding ſuch treaties, are ſeparate bodies and independent.

Syſtems of ſtates.

They are then alone deemed politically united, when ſome one perſon or council is conſtituted with a right to exerciſe ſome eſſential parts of the ſupreme power for both, and to hinder either from exerciſing them ſeparately. If any perſon or council is impowered to exerciſe all theſe eſſential powers for both; they are then one ſtate, and an entire coalition is made, tho' the ſeveral parts of this ſtate may retain their antient laws and cuſtoms as to all private rights; ſince theſe are all authoriſed for the ſeveral parts by the power which is ſupreme over the whole. But when only a ſmall ſhare of the ſupreme civil power is veſted in one perſon or council for both, ſuch as that of peace and war, or of deciding controverſies between two ſubjects of different ſtates, while each of the two ſtates within itſelf exerciſes independently all the other parts: in this caſe they are called a ſyſtem of ſtates. And in theſe ſyſtems greater numbers of ſmall ſtates are ſometimes united. Such ſyſtems ariſe when the king of one kingdom ſucceeds alſo to another, having in both ſome parts of the ſupreme power which he can exerciſe alone: or when there is a mutual agreement of ſeveral ſtates to conſtitute a common council, ſuch as

BOOK III. was among the Achaian ſtates; whence theſe ſyſtems are called by ſome authors Achaick confederacies.

CHAP. VI.

The ſeveral FORMS *of* POLITY, *with their principal Advantages or Diſadvantages.*

Three ſimple forms.

I. ACCORDING as theſe eſſential parts of civil power are committed either to one perſon, or to ſome council or aſſembly, there are different forms of polity: of which ſome are wiſely adapted to the intereſt of ſociety, and are thence to be called regular; others are ill contrived for this purpoſe, and are irregular.

When all the parts of the ſupreme power are committed to one perſon, 'tis called Monarchy; when they are committed to a council, if the council conſiſt of a few perſons of eminence, 'tis called an Ariſtocracy; if to an aſſembly of the people, or of ſome deputies choſen by them, it is called a Democracy, and theſe are the three general claſſes of ſimple forms.

How matters are determined by a council or aſſembly.

In thoſe forms where power is committed to a council, 'tis always underſtood, where there is no ſpecial limitation in the conſtitution, that the majority of the council have the right of determining all matters propoſed. And that that is the will or deed of the council which has the plurality of votes. 'Tis however exceedingly convenient that a certain number or *quorum* be determined who muſt be preſent to make this council the proper repreſentative of the

whole body; otherwiſe different ſmall cabals at different times may make the moſt contrary decrees. There is another limitation highly prudent, that in affairs of great importance more than a bare majority ſhould be requiſite; ſuch as two-thirds, or three-fifths: particularly in altering any of the antient laws, or in condemning any perſon impeached. Precaution ſhould alſo be taken againſt an obvious fallacy in all queſtions or ſtates of votes with three members; in which there may be more votes for one ſide of the queſtion, than for either of the other two, and yet thoſe for the other two ſides may together be almoſt double the number of that majority. Thus in a council of an hundred, there may be thirty-four for one ſide and thirty-three for each of the other two, and yet without ſome precaution in the conſtitution, thirty-four may determine a point againſt the inclination of ſixty-ſix. Such queſtions may generally be reduced firſt into a ſimple queſtion of two parts, and when one of theſe is determined it may be ſub-divided again into another queſtion of two parts if neceſſary. In like manner in elections to offices, where there are three candidates, there ſhould always be a vote previous to the deciſive one; to try firſt what two of the three candidates have the greateſt number of votes; and he who has the feweſt ſhould be left out in the deciſive vote to be put between the other two candidates. CHAP. 6.

II. Each of the three general claſſes of forms have many inferior ſpecies with moſt important differences. Monarchy is either *abſolute*, when the whole admini- *Each claſs of ſimple forms has many ſpecies. Monarchy.*

BOOK III. ſtration is committed to the prudence and integrity of the prince, without any other reſtrictions than thoſe always to be underſtood in civil power from the very end of it: or limited, where by ſome original laws in the very conſtitution or conveyance of the power the quantity of it is determined, and limits ſet to it, with reſervations of certain publick rights of the people not intruſted to him; and yet no court or council conſtituted which does not derive its power from him. Again, Monarchy may be either *hereditary* or *elective*; *during life*, or for a *certain term*.

The ſpecies of ariſtocracy.

Ariſtocracy, or the power of a ſenate, admits like variety: it is either *abſolute* or *limited*; or *temporary*, where the ſenators ſit only for a certain term in the ſenate, and then return to a private condition, or *perpetual* during life. It may be either *hereditary*, where the repreſentatives of certain families are ſenators; or *elective*, where either at certain periods the whole ſenate is choſen, or vacancies ſupplied, as they happen, by election; and this is done either by * *creation* or a popular election, or by *co-optation* of the ſenators; and theſe in many different ways. Sometimes a certain fortune, or the poſſeſſing certain lands entitles to a ſeat in the ſupreme council; † and this Ariſtotle calls an Oligarchy.

Democracies of different kinds.

Democracies too are of very different kinds. Sometimes all the free men of the ſtate with equal right of

* Theſe are the terms uſed by the Romans, *creation* for popular election, and *co-optations* for election to an office by the colleagues in that office. † This Ariſtotle and Plato call a Timocracy, or Oligarchy.

ſuffrage make the ſupreme aſſembly. Sometimes a few deputies are choſen annually, or at certain periods, either by a whole people at once; or each of the ſeveral ſmall diſtricts into which a people is divided have a right of returning a certain number of deputies to the aſſembly. Sometimes a certain fortune or eſtate is requiſite to entitle to a vote in the aſſembly, or to a vote in chuſing deputies or repreſentatives. Sometimes a part choſen by lot conſtitutes the ſupreme aſſembly: ſometimes where all have votes yet their votes are not of equal effect, but * being divided into certain claſſes, and theſe ſub-divided into centuries, or ſmaller claſſes, not according to their numbers, but rather their wealth, matters are determined not by plurality of ſingle votes, but by the plurality of concurring centuries; tho' in one century there be far greater numbers than in others. Theſe are the principal models of the ſimple forms.

Complex forms innumerable.

The complex forms are innumerable according as Monarchy of any of the above-mentioned kinds is combined with ſome of the ſeveral ſorts of Ariſtocracies, or Democracies, or with both. And further diverſities may ariſe according as the ſeveral eſſential parts of ſupreme power are entruſted differently with the prince, the ſenate, or the popular aſſembly. And thus the variety is endleſs, as one may ſee in Ariſtotle's politicks and Harrington.

The moſt important general maxims.

III. To enable one to compare the ſeveral forms, and judge of the moſt convenient, we ſhall premiſe

* The *Comitia Centuriata* of *Servius Tullius*.

BOOK III. ſome general maxims of great importance, and then make ſome ſpecial remarks upon the conveniencies and inconveniencies of the ſeveral ſimpler forms which muſt be parts in every complex one.

Four grand advantages to be ſecured.

1. 'Tis obvious that when by any plan of polity theſe four advantages can be obtained, *wiſdom* in diſcerning the fitteſt meaſures for the general intereſt; *fidelity*, with *expedition* and *ſecrecy* in the determination and execution of them, and *concord* or *unity*; a nation muſt have all that happineſs which any plan of polity can give it; as ſufficient *wiſdom* in the governors will diſcover the moſt effectual means, and *fidelity* will chuſe them, by *expedition* and *ſecrecy* they will be moſt effectually executed, and unity will prevent one of the greateſt evils, civil wars and ſeditions. The great neceſſity of taking ſufficient precaution againſt theſe miſchiefs of factions and civil war leads moſt writers in politicks into another obvious maxim, viz.

The parts of ſupreme power ſhould be united.

2. That the ſeveral parts of ſupreme power if they are lodged by any complex plan in different ſubjects, ſome granted to a prince, others to a ſenate, and others to a popular aſſembly, there muſt in ſuch caſe be ſome *nexus imperii*, or ſome political bond upon them, that they may not be able or incline to act ſeparately and in oppoſition to each other. Without this, two ſupreme powers may be conſtituted in the ſame ſtate, which may give frequent occaſions to civil wars. This would be the caſe if at once both the ſenate and popular aſſembly claimed the legiſlative

power; as it happened in Rome after the tribunes held assemblies of the plebeians without authority of the senate, and obtained that the decree of the plebeians should have the force of laws, while the senate insisted upon the like force to their decrees. The like was the case in many nations of Europe, while the ecclesiastick state pretended to make obligatory laws, and exercise certain jurisdictions, independently of the civil. If therefore the several essential parts of supreme power are distributed among different persons or courts, they must have some strong bond of union. If a prince has the executive, and the power of peace and war, while another body has the legislative, the power of raising tributes must be at least necessarily shared with the legislative council, that it may never be the prince's interest to make war without their concurrence: and the prince must have a share in the legislative. Without such bonds laws might be enacted which the prince would not execute, or wars entered into which the nation would not support. CHAP. 6.

But there is no such necessity that all the parts of the supreme power should be committed either to one person or one council. Unity may be preserved otherways. And other interests of the state may require that they should be divided. *No necessity that they should be all in one person or in one council.*

3. Another maxim is equally certain from reason and the experience of all nations, "That property, "and that chiefly in lands, is the natural foundation "upon which power must rest; tho' it gives not any "just right to power." Where there is property there *Property the sole bottom for civil power, 1. In Monarchy.*

BOOK III. numbers of men can be ſupported, and thei r aſſiſtanc obtained as they can be rewarded for it: and where they cannot be ſupported and rewarded, their aſſiſtance is not to be expected. When power wants this foundation, the ſtate muſt always be reſtleſs, fluctuating, and full of ſedition, until either the power draws property to itſelf, or property obtains power. Men who have property, and can therefore obtain force, will not be excluded from ſome ſhare of power. And men in power will exert it one way or other in obtaining property to ſupport themſelves; which muſt occaſion convulſions in a ſtate. Pure Monarchy will never continue long without crown-lands, or hereditary provinces, where the lands are either the property of the prince, or he has a power over them equivalent to property. 'Tis true, that to ſupport Monarchy, or the power of a few, it is not neceſſary that the monarch or the cabal ſhould have near one half of the property. A much ſmaller ſhare will be ſufficient where the counſels are united as they are under a prince or a cabal of a few; and may be an over-match for double or treble the property diſperſed among ſuch multitudes as ſeldom can unite in their deſigns, or in the meaſures ſubſervient to them. But ſtill the maxim holds, that without a large ſhare of property ſuch power cannot be ſtable.

2. *Ariſtocracy.* An hereditary Ariſtocracy in like manner ſhall be expoſed to conſtant ſeditions and fluctuation, unleſs a very large ſhare of the lands are the property of the ſenators. As the ſenators themſelves are often of dif-

ferent ſentiments and deſigns, there is not ſuch unity of council as in Monarchy; and therefore a larger ſhare of property in their hands is neceſſary for the ſtability of that form, than is neceſſary to be in the monarch for the ſtability of the Monarchy. If they have not near an half of the property, there may be an intereſt and a force ſufficient to controul them, and change the form of polity. CHAP. 6.

3. *In Democracy.* A Democracy cannot remain ſtable unleſs the property be ſo diffuſed among the people that no ſuch cabal of a few as could probably unite in any deſign, ſhall have a fund of wealth ſufficient to ſupport a force ſuperior to that of the reſt. And in the ſeveral complex forms of polity there muſt ſome ſuitable diviſion of property be obſerved, otherways they ſhall always be inſtable and full of ſedition; when power has its natural foundation of property it will be laſting, but may, in ſome forms, be very pernicious and oppreſſive to the whole body of the people; and it muſt be the more pernicious that it will be very permanent, there being no ſufficient force to overturn or controul it. And this ſhews the great care requiſite in ſettling a juſt plan, and a ſuitable diviſion of property, and in taking precautions againſt any ſuch change in property as may deſtroy a good plan: this ſhould be the view of Agrarian laws.

A Democratick part requiſite in every plan. 4. As 'tis manifeſt that in Democracies, and in all Democratick aſſemblies truly choſen by the people, and united in intereſt with them, there muſt ever be a faithful intention of the general intereſt, which is the

intereſt of the whole aſſembly; no conſtitution can be good where ſome of the moſt important parts of the civil power are not committed in whole or in part to ſuch an aſſembly, which ever muſt be faithful to that intereſt for which all civil polity is deſtined. And conſequently when the ſituation of the people, their manners and cuſtoms, their trade or arts, do not ſufficiently of themſelves cauſe ſuch a diffuſion of property among many as is requiſite for the continuance of the Democratick part in the conſtitution; there ſhould be ſuch Agrarian laws as will prevent any immoderate increaſe of wealth in the hands of a few, which could ſupport a force ſuperior to the whole body. 'Tis in vain to talk of invading the liberty of the rich, or the injury of ſtopping their progreſs in juſt acquiſitions. No publick intereſt hinders their acquiring as much as is requiſite for any innocent enjoyments and pleaſures of life. And yet if it did, the liberty and ſafety of thouſands or millions is never to be put in the ballance with even the innocent pleaſures of a few families; much leſs with their vain ambition, or their unjuſt pleaſures, from their uſurped powers or external pomp and grandeur.

No oppreſſive privileges ſhould be allowed to any orders of men.

For the ſame reaſon, all thoſe groundleſs partition-walls among citizens, confining places of power and profit to certain families or certain orders, ought to be prevented or broke down; as they are both the occaſions of immoderate and dangerous wealth in theſe orders; and give the juſteſt cauſes of indignation, reſentment, and ſetting up of a ſeparate intereſt, to all

thoſe who are thus unjuſtly excluded. Thus we ſee that Rome was never at reſt till the brave and popular among the plebeians obtained acceſs to the higheſt offices in the ſtate, contrary to their old unreaſonable laws. The general good of all is the end of aſſociating, and not the grandeur of a few. If certain orders muſt reap all advantages, they ſhould make a ſtate by themſelves, without other orders united with them. CHAP. 6.

The numbers fitteſt for a ſtate.

5. Tho' 'tis not poſſible to fix upon any one number of perſons or families as the very beſt for a political union, yet we may ſee plain reaſons why certain numbers are too ſmall, and others too great. For it is plain on one hand, firſt, that the greater the numbers united are, the greater muſt be the danger that the vigilance of magiſtrates ſhall not extend to them all for protection and improvement of their condition; and that many ariſing diſorders ſhall not be remedied. And then the tumults and convulſions of ſuch great bodies ſhall be more terrible and calamitous, as greater multitudes are involved in them.

Some too great.

Again, 2. The greater the multitudes are which thus unite into one ſtate, the number of ſtates into which mankind are cantoned muſt be ſo much the fewer, and conſequently a ſmaller number of mankind can ariſe to eminence, or have opportunities of exerting their abilities and political virtues, or of improving them for the benefit of mankind. In ſome vaſt ſtates conſiſting of many millions, there is but a ſmall number who are admitted to the ſupreme councils, or have any conſiderable ſhare in the adminiſtrati-

BOOK III. on. The reſt are either wholly excluded, or have no other ſhare than blindly obeying the orders of their ſuperiors. If the ſame multitude had been divided into many ſmaller ſtates, there had been room for many men of finer genius and capacity, to exert their abilities, and improve them by exerciſe in the ſervice of mankind; whether by forming men to virtue, cultivating in them all ſocial diſpoſitions, and training them in publick offices civil or military; or in improving the ingenious arts. Accordingly we find that all virtues and ingenious arts flouriſhed more in the little ſtates of Greece than in any of the great empires.

Others too ſmall. But on the other hand, 1. The numbers muſt be ſo great as to be eaſily ſuperior in force to any ſuch bands of the manifeſtly and avowedly unjuſt as may probably unite together. In ſtate-factions, upon ſome ſpecious tho' falſe views of right, vaſt numbers may unite, eſpecially in the greater ſtates: this ſhould be prevented by a proper plan of polity. But ſeldom do thouſands of robbers or pirates unite for avowedly unjuſt depredations, and yet a thouſand families would ſcarce be ſufficient to reſiſt ſuch bands of robbers as might be apprehended.

Again, 2. There are many grand and uſeful deſigns of great and laſting advantages in life, which require both great wealth and a great number of hands. Such as clearing foreſts, draining marſhes, maintaining foreign commerce, making harbours, fortifying cities, cultivating manufactures and ingenious arts, and encouraging the artizans.

But 3. Whatever numbers might have ſufficed for the full improvement of human life, before any great ſtates had ariſen in their neighbourhood, and been therefore large enough for forming little ſtates; yet after a great empire is formed, much larger numbers are requiſite in the ſtates around it, and it immediately becomes adviſable for many ſmall ſtates to unite in a large one; or to form ſome ſtrongly united ſyſtem, that they may be able to reſiſt the over-grown empire. This is ſeldom done ſucceſsfully by common leagues or alliances; little jarrs and ſuſpicions may make their alliance of little effect. And ſeldom do they all exert themſelves as vigorouſly as they would do after an entire coalition, or after ſome ſyſtem formed ſo ſtrongly as to come near to a compleat coalition. CHAP. 6.

Extraordinary rights for future ſafety.

6. As ſome extraordinary dangers in natural liberty may juſtify ſome extraordinary meaſures; and as in civil ſociety it may be perfectly juſt to ſet limits even to ſuch acquiſitions as are not to be made injurioufly, but may hereafter prove dangerous to the community; ſince a more extenſive intereſt of mankind is always to limit and controul the leſs extenſive: it may in like manner be perfectly juſt in neighbouring ſtates to put an early check to any dangerous power ariſing. If they ſee any ſtate artfully modelled for conqueſt or for oppreſſing their neighbours, and keeping a-foot ſuch military diſcipline and force as they cannot be ſecured againſt, conſiſtently with the allowing their people to follow their honeſt and innocent occupations, or without vaſt expences; they

BOOK III. have * juſt right to free themſelves from theſe dangers at once before they grow too great, by breaking the power of that ambitious neighbour, or by obtaining ſuch ſecurity as ſhall be ſufficient for their ſafety, ſuch as the ſurrendry of fortified places, or the demoliſhing them: or any other ſecurity the leaſt oppreſſive that ſhall prove effectual for their ſafety.

The polity ſhould prevent abuſes of power by bad hands.

7. We laſtly obſerve once for all, that in contriving of civil polity no account is to be made of what good men in power would do in any plan: good and wiſe men inveſted with power in any plan would promote effectually the general happineſs. The grand point is "to prevent miſchief to the ſtate, or its members, "even when power comes into bad hands," as no human wiſdom can ſee into an hypocritical or changeable heart; and in all plans bad men may come into power. But there may be ſuch contrivances in the polity as may reſtrain their evil intentions, as may remove temptations to abuſe their power; or at leaſt may take away all hopes of ſucceſs, and of finding their intereſt in abuſing it.

The peculiar advantages and dangers of the ſimpler plans.

1. Elective Monarchy.

IV. We proceed to the more ſpecial remarks upon the peculiar advantages and diſadvantages of the ſeveral ſimpler forms. And firſt, Monarchy almoſt of every kind has theſe advantages that it naturally promotes *unity*, and can execute its deſigns with *expedition* and *ſecrecy*. Rebellions may ariſe againſt any ſorts of governors; but, as the whole power in Monarchy is committed to one; there is no door open-

* Thus the Civil Law allows the *actio damni infecti* before damages are ſuſtained.

ed in the very plan to ſedition. And one perſon always preſent to exert his power may do it with more expedition, as well as ſecrecy, than any council of many. In elective Monarchies, if the plan of election be tolerable, there is pretty good ſecurity for *wiſdom* in the governor. But by this plan there is no ſecurity for *fidelity;* and very little for unity. As the crown does not deſcend to the poſterity of the elective monarch, he will ever be attempting to alter the conſtitution; or if he deſpairs of ſucceſs in this deſign, his next will be to * enrich and aggrandize his own family, by all manner of exactions from his ſubjects. And tho' concord may be preſerved during his life, on every new election there muſt be great danger of a civil war.

Hereditary Monarchy.

In hereditary Monarchies there may be leſs dangers of civil war, and more ſecurity for fidelity; as the grandeur of the prince's family depends on the proſperity of his country. But this is often over-looked by imprudent princes, who may take the moſt oppoſite meaſures, by giving themſelves up to luxury and pleaſure, or amaſſing wealth; breaking the ſpirits and ruining the fortunes of their ſubjects, and oppreſſing all eminent virtue and love of freedom as dangerous to themſelves and their families. Thus the ſecurity for fidelity is but ſmall, and there is none at all for wiſdom or political abilities in men educated from their infancy in that elevation of fortune, where a conſtant deference is paid them inconſiſtent with all

* This has been the conſtant conduct of that Monarchy abſurdly called ſpiritual, the Popedom.

BOOK III. candid adviſing or reproving, all expreſſing of diſlike at what is wrong in them; no wonder that uncontroulled paſſions ariſe, that ſuch ungoverned minds loſe all equitable diſpoſitions toward their fellow-creatures, for whoſe intereſt they are intruſted with theſe powers; and grow incapable of ſelf-government, or of any vigorous application either to the publick intereſts or their own. Such perſons muſt generally be made a prey or a property to fawning and artful ſycophants.

Limited Monarchies better than abſolute.

Could wiſdom and fidelity be inſured, no form would be preferable to abſolute hereditary Monarchy. But there can be no ſuch ſecurity in any hereditary office. In Monarchies only limited by laws without any council ſharing with the prince in any parts of the ſupreme power, there are pretty much the ſame dangers, both of imprudence and ſeparate intereſt of the monarch. But the right of reſiſtance will be more manifeſt to the whole people; and there will readily be a more general concurrence of the people to preſerve their rights by juſt violence, whenever the prince invades any of theſe that are expreſly reſerved by fundamental laws, than where there are no ſuch limitations. In this form indeed there is a door open to perpetual ſtruggles; as the prince will always be attempting to enlarge his powers, and the people watching againſt it.

Wiſdom often founded in Ariſtocracies, but not unity, or expedition, or fidelity.

V. In Ariſtocracies where the whole power is lodged in a council of men of eminent ſtations or fortunes, one may ſometimes expect ſufficient wiſdom

and political abilities to diſcern and accompliſh what- CHAP. 6.
ever the intereſt of the ſtate may require. But there is no ſecurity againſt ſeditions and civil wars. Nor can this form ſecure fidelity to the publick intereſt, or admit of ſecrecy and expedition. The views of a corrupt ſenate will be aggrandizing themſelves and their families by all oppreſſion of the people. In hereditary ſenates theſe evils are moſt to be feared, and the majority of ſuch bodies may ſometimes want even political wiſdom. Among men born in high ſtations of wealth and power; ambition, vanity, inſolence, and an unſociable contempt of the lower orders, as if they were not of the ſame ſpecies, or were not fellow-citizens with them, too frequently prevail. And theſe high ſtations afford many occaſions of corruption, by ſloth, luxury, and debauchery. An unmixed hereditary Ariſtocracy muſt be among the very worſt forms, ſince it neither ſecures wiſdom, fidelity, unity, nor ſecrecy.

The elective are the beſt ſorts.

In a council of ſenators elected for life by the people or by any popular intereſt, there is better ſecurity both for wiſdom and fidelity. The people, tho' not the beſt judges of abilities, yet follow at leaſt the character for wiſdom, which wiſe men generally obtain. And ſuch ſenators muſt be excited to fidelity, both by gratitude to their electors, and by their deſire of popularity, and influence in any future elections, that they may carry them for their friends. But there is no ſecurity againſt diſcord and ſedition in ſuch a council. And ambitious views of enlarging their

BOOK III. wealth may make the ſenators unfaithful to the popular intereſts.

When new members are admitted by co-optation, the ſenate may turn into a dangerous cabal, without any of the advantages deſirable in civil polity, and attempt to make their office hereditary. But when ſenators are elected by the people, and continue in office only for a ſhort term, after which they return to the ſame condition in point of right with the populace, ſuch a ſenate is more properly called a popular aſſembly, and the polity is a Democracy. In this form fidelity and wiſdom are abundantly ſecured: but it lies open to ſeditions, and cannot be ſpeedy or ſecret in the execution of its deſigns. This model can only be called Ariſtocratick when the people are confined to elect the ſenators out of certain eminent families; and even ſo it is not one of the ſimple forms, ſince the creation of magiſtrates, one of the eſſential parts of ſupreme power, is lodged with the people.

This limitation however of a people in their elections to certain orders, or to ſome eminent families, will always raiſe two grand factions with ſeparate intereſts. The wiſe, and brave, and ambitious among the plebeians will ever be making ſtrong efforts to break down this partition and obtain acceſs to the ſenate, and ſeditions can ſcarcely be prevented.†

† Moſt of theſe remarks upon Ariſtocracies one ſees confirmed by the whole firſt Decad of Livy, which Machiavel juſtly choſe as the fund of his political obſervations. When ſenators are entitled to be elected by a certain degree of wealth, Ariſtotle calls the form Oligarchy, and gives a long detail of its dangers, l. iii. c. 5. and l. iv. c. 2. When they are choſen upon ſome fame for virtue, he calls it the proper Ariſtocracy, as do others of the antients.

VI. In all forms of Democracy one may be ſure of fidelity. The popular aſſemblies always deſire the good of the whole as it is their own. But where the whole power is lodged in ſuch aſſemblies, without any check or controll by a prince or ſenate, there is no ſecurity for wiſdom, unity, or ſecrecy. This is obvious where all the free men meet in the aſſembly, there is no hope of wiſdom, no avoiding ſeditions, no ſtability of councils. Suſpicion and envy can be raiſed, by artful ſelfiſh demagogues, againſt all virtue and eminence, even where there is the greateſt need for them. Their reſolutions are ſometimes extravagantly bold; and again, when a pannick is raiſed, abjectly timerous. CHAP. 6.

All Democracies are faithful, but deficient in other reſpects.

When the power is committed to a numerous aſſembly of popular deputies or repreſentatives for a ſhort term; equal fidelity may be expected, if they are fairly elected by a popular intereſt, and much more wiſdom and ſtability: and yet there is no ſecurity here againſt faction and ſedition; and, as the humours of a people change at the different elections, there may be too much inſtability.

A council of Democratick deputies the beſt ſort.

Electing by the lot as it excludes all briguing and bribery, ſo it excludes all prudence in the choice, and all regard to merit: unleſs there be firſt a leet, or ſmall number of candidates for each office, choſen by ſuffrage, and then one of this number determined by lot; conſtituting the ſupreme aſſembly ſo that matters are determined by plurality of centuries and not of ſingle ſuffrages, may caſt the power much into the

The beſt form of elections.

BOOK III. hands of men of ſuperior † ſtations and knowledge, but gives no ſecurity againſt ſeditions.

No ſimple forms ſafe.

VII. From theſe reaſonings it appears that none of theſe ſimple forms can be ſafe for a ſociety. If theſe deſerve to be called the regular forms which are wiſely adapted to the true end of civil polity, all the ſimple forms are to be called rather rude and imperfect. Complex forms made up of all the three will be found the beſt and moſt regular according to the general doctrine both of ‡ antients and moderns. 'Tis little to the honour of any form, and of little conſequence to ſhewing it to be a juſt or prudent, or ſacred and venerable one, that it was the antienteſt, or prevailed in the earlieſt ages. There is no human contrivance that we could leſs expect to be brought to perfection at firſt, or in a ſhort time and upon little experience, than that of civil polity; as the ſettling it well muſt require the greateſt wiſdom and experience. The argument of antiquity would recommend to us to return again to dens, and caves, and beaſts skins, and accorns, or wild frŭits of the earth, inſtead of our preſent houſes, food and cloathing. A rude artleſs plan might ſucceed well in earlier days while more of the earlier ſimplicity and innocence of manners was preſerved. But, when luxury and corruption of manners

† This form Ariſtotle calls a Timocracy.

‡ This is plain in Ariſtotle tho' he prefers a certain ſort of pure abſolute Monarchy, which only exiſts in the ſpeeches of flatterers, where the king is ſomeway divine and ſuperior to all others in perſonal virtues. Zeno was of the ſame opinion. See *Laert. in Zenone.* So *Polybius, Hiſt. p.* 628 and 638. *Dionyſ. Halicar. Antiq. l.* ii. *Cicero apud Non. Marcel. de verb. prop.* 4. 292. *Tacit. Ann.* 4. 33.

crept in, men would ſoon find the neceſſity of more artful polities. CHAP. 6.

Complex forms innumerable.

Of the complex or mixed forms there is an endleſs variety, according as the ſeveral parts of ſupreme power may be differently lodged in the Monarchick, Ariſtocratick, or Democratick bodies of the ſeveral ſpecies above-mentioned. Many of theſe varieties are conſidered in the fourth, fifth, and ſixth books of Ariſtotle, and in Harrington, with the natural cauſes and occaſions of changes and of ruin. We ſhall only ſuggeſt ſome general remarks upon the propereſt manner of combining theſe ſeveral ſimpler forms into a complex one.

The wiſeſt forms of them with an agrarian law.

VIII. To preſerve the Democratick part, we obſerved above the uſe of ſome agrarian law, or ſome contrivance that would prevent any dangerous degree of wealth coming into the hands of a few. No preciſe ſum can be fixed as the higheſt. Different ſtates may admit of different degrees of wealth without danger. If the agrarian law limits men to too ſmall fortunes; it diſcourages the induſtry of the more able hands in trade or manufactures. If it allows too much wealth, ſome cabal of potent families may enſlave the reſt. Without any ſuch laws ſome mixed ſtates are ſafe, provided the lords can ſell their eſtates, and trade and manufactures flouriſh among the plebeians; and they have acceſs to the places of greateſt profit and power. By theſe means, without any law, wealth may be ſufficiently diffuſed.

A good yeomanry.

2. 'Tis of great advantage in every form that the

BOOK III. common farmers or husband-men have good tenures; not ſuch as ſhall maintain them in ſloth or afford ſervants to do all labour for them; but yet ſuch as will yield a plentiful ſupport to the laborious and induſtrious; that they may live happy, and have ſtrength of body and mind for defence of themſelves and their country againſt domeſtick tyrants or foreign invaders.

A popular aſſembly of deputies.

3. The ſafeſt popular aſſembly in a mixed form is that of deputies or repreſentatives proportionally and fairly elected for a certain term. In ſuch aſſemblies the number of deputies from the ſeveral diſtricts ſhould be proportioned to the number of people and their wealth in the ſeveral diſtricts. A conſtant door to corruption muſt be open if ſmall or poor diſtricts and cities have repreſentatives quite beyond the proportion of their wealth to the reſt, and of the ſhare they bear in the publick burdens; beſides it is a manifeſt iniquity to the greater diſtricts. And the manner of election ſhould be ſuch as excludes bribery and corruption, otherways they are not true repreſentatives of their diſtricts. In ſuch an aſſembly there muſt be undoubted fidelity, and therefore the largeſt ſhare of the legiſlative power ſhould be committed to them. If ſuch aſſemblies are leſs fit for deliberating, debating, concerting, and propoſing laws, they ſhould have the chief power of enacting; as they will never incline to enact what they do not judge uſeful to the whole body, ſince whatever is oppreſſive or hurtful to the people muſt be ſo to themſelves.

CHAP. 6.

4. To prevent ſeditions in the popular aſſembly and the inſtability of its councils and meaſures, 'tis generally convenient that there be a ſenate of a few; which, being elected by the people or by a popular intereſt, upon character for eminent abilities, ſhould have the whole right of deliberating, concerting, and propoſing laws or decrees to the popular aſſembly: and ſhould continue only for a limited term, changing by rotation, and not all at once: a ſenate thus conſtituted might ſafely be entruſted alſo with the higheſt juriſdiction, or judging of all cauſes in the laſt reſort, and with the creation and election of magiſtrates and officers civil and military, at leaſt they ſhould have a large ſhare in ſuch creations. There would be little cauſe to apprehend their having any views oppoſite to the popular intereſt; ſince after a few years they and their families ſhall be in the ſame condition with the populace in point of right: and all their hopes of re-election after the limited periods, muſt depend on their good character with the people. Such a ſenate would be the beſt judges of the abilities of men for important offices.

A ſenate neceſſary with the power of propoſing and deliberating, of juriſdiction and creation of magiſtrates.

5. In all ſenates, councils, or aſſemblies to be elected for a certain term, a rotation is of great uſe, by which a third or fourth part only goes out at one time and their places then are ſupplied. Suppoſe this happens annually, or every ſecond year, a majority ſtill remains of old members, ſuch as are well acquainted with the reaſons of all meaſures formerly concerted, and are enured to publick buſineſs; and yet dangerous

A rotation and leges annales *neceſſary as to offices.*

BOOK III. cabals may be prevented or broken; and new able characters are brought to light, and find opportunities of exerting their abilities in the publick ſervice: and the ſtate gets more hands whom it can truſt in any important affairs civil or military; nor is it diſtreſſed by the death or treachery of thoſe formerly employed; nor is there ſuch envy and diſguſt raiſed by this method in the body of the people, or in the greater families, as when a ſmall cabal of men engroſs for a long time all the offices of profit and power. Not to mention the dangers to be apprehended to any free ſtate from the long continued power of a few, which begets in them inſolence, and ſuch ambitious views as they never would have entertained had the term of their power been limited by law.

Magiſtrates ſhould have fixed periods.

6. The like reaſons ſhew the advantages of making all magiſtracies annual, or, if that term be too ſhort for ſome great deſigns, of limiting them at leaſt to a certain ſmall number of years. This regulation may ſometimes deprive the ſtate of the ſervices of ſome men of ſingularly great abilities, and yet not generally. Thoſe who go out of office by a fixed law are not affronted; their ſucceſſors may often obtain their council and aſſiſtance. And where ſuch laws have obtained for any conſiderable time, there will be conſiderable numbers of men of diſtinguiſhed abilities and experience for the ſeveral offices civil or military. The hopes of the ſtate need not depend on one alone; there would be no diſtreſs by the death of one. And each magiſtrate would be more zealous to do publick ſer-

vices in his turn, that he may obtain honour and popularity, and thus ſecure his re-election as ſoon as the laws permit. Longer military command may be more ſucceſsful in the ambitious views of conquering. But ſuch deſigns ſeldom increaſe the happineſs of the victorious ſtate; and they create a great deal of unmerited miſery to others; all ſuch views are wicked and unjuſt.

A regal or dictatorial power.

7. To prevent ſeditions in either of theſe aſſemblies, and their contentions with each other, and all attempts to alter the conſtitution by the one's invading the right of the other, there ſhould be a monarchick or dictatorial power conſtituted as an umpire between them; by which too the execution of all deſigns may be made more expeditious and ſecret where it is requiſite. This power may be committed either hereditarily to ſome family, yet without other foundation of wealth than what depends on the law, or the grants of the popular aſſembly, or to a ſmall number or council of a few elected for a certain term by the ſenate, and ſitting continually, ſo as to be always ready to exert the force of the ſtate for its defence againſt ſudden dangers; changing by rotation, and each one of them accountable, after his power expires, to the ſenate or popular aſſembly for any ſteps taken during their adminiſtration. Such a prince, or dictatorial council, may ſafely enjoy the executive power, and a ſhare alſo with the ſenate in the promoting to offices.

BOOK III.

8. The ballot *, well contrived, prevents all competition or undue influence on the ſuffrages, whether in elections, or in the determinations about affairs propoſed in the ſenate or popular aſſembly, or in judicature. By the ballot men can vote as they pleaſe, without incurring the reſentments of the powerful, or a popular odium, or the anger of their party. The corrupter may loſe his bribe, and yet gain no vote by it. At the ſame time 'tis plain the ballot takes away all ſhame, and gives free ſcope to private pique and malice, and envy. But theſe paſſions can ſeldom influence any great numbers of a large aſſembly againſt any one perſon, unleſs he has given juſt occaſion for them. Theſe inconveniencies therefore are far from equalling thoſe which may attend other ways of voting in a free nation. The worſt effect of the ballot is the forcing ſometimes ſome great and good men to leave their country for a few years when the people are ſuſpicious of their power.

The uſe of the ballot.

9. The members of the popular aſſembly ſhould have † full previous information of matters to come before them, with the reaſons on both ſides, and not be firſt informed by tedious altercation when they are aſſembled. There may be opportunities for all who incline to inform thoſe concerned of the reaſons ur-

Previous opportunities of informing the popular deputies.

* The moſt prudent method in elections by the people is that by both *ballot* and *ſcrutiny*, as explained by Harrington, and practiſed in Venice and ſome other ſtates. The *Leges Tabellanae* in Rome are well known.

† A law concerted by the ſenate was intimated to all by the *promulgatio per trinundinum*, and men could promote or oppoſe the law by ſpeeches from the *Roſtra*.

ged on both ſides, while men are cooler than they can be expected to be in the midſt of keen debates in the very aſſembly. CHAP. 6.

A cenſorial court.

10. In every ſtate a cenſorial power is of great conſequence: that by it the manners of a people may be regulated, and that luxury, voluptuous debauchery, and other private vices prevented or made infamous, which otherways would deſtroy all publick virtues, and all faithful regard to the general good, and lead men to ruin the beſt contrived polity. Of this more hereafter. 'Tis in vain that princes or ſenates complain of corrupt manners. Their complaints muſt raiſe juſt indignation againſt themſelves, while the higheſt dignities, the greateſt offices civil and military are promiſcuouſly conferred by them on perſons of the moſt profligate characters as readily as upon the moſt virtuous. In vain they expect an inward reverence to their perſons or authority, while the perſons nearеſt to them, and promoted by them, employ the power and wealth conferred on them chiefly upon indulging themſelves in all debauchery and infamous vices with impunity, or in a ſelfiſh aggrandizing themſelves and their families.

The cenſors ſhould be created by the ſenate with full power of degrading from all honours and offices men of infamous lives and of diſſolute conduct. They ſhould have power alſo of inflicting ſome more ſevere puniſhments. This truſt is perhaps more ſafe in the hands of a cenſorial council for a ſet term changed by rotation, than in thoſe of any one perſon.

BOOK III. From a due conſideration of theſe points the more convenient models of civil polity may be found, amidſt that great variety of complex ones which may occur to us. The moſt ſuitable conſtitutional laws to each are at large conſidered by Ariſtotle and Harrington.

CHAP. VII.

The RIGHTS *of* GOVERNORS; *how far they extend.*

Civil ſupremacy what it conſiſts in.

I. THE rights of the ſupreme governors are ſuch as are veſted in them by the conſtitution, as far as the rights of ſubjects are naturally alienable, and in fact alienated, by any juſt deed of theirs, againſt which there lyes no juſt exception. And firſt, ſuch as are inveſted with the ſupreme power, 'tis plain, are not accountable to any perſon or court upon earth as a civil ſuperior; to ſuppoſe it would be a contradiction.

Not the ſame in every ſtate.

But we muſt not thence conclude that the ſame quantity of power, even abſolute and unlimited, is in every plan of polity committed either to ſome political perſon, or council, or both jointly, as there can be in any other plan. The whole body of a people in any country, did they reaſſemble again, and reſolve to enlarge the powers of the rulers to the utmoſt, may convey as much power to them as any rulers elſewhere can juſtly enjoy. But in ſome ſtates unlimited power is already conveyed to a prince, or to a ſenate, or

to an assembly, or to all these together; whereas in other states certain rights in the very constitution are reserved to the people, which neither any prince, nor any political council, nor both jointly, have any right to invade. Such are the fundamental laws in many states, settling the very legislative power in some councils along with the prince, and both jointly cannot alter them. No deed of such a council can empower the king to make laws by himself or to levy tributes. Any such transaction of a council or popular assembly with the prince would of itself be void, as exceeded all the powers vested in them. In some called absolute and hereditary monarchies, the prince never claims the right of altering the order of succession, or of alienating any part of his territory, without consent of the whole body, or of transferring the kingdom to another. CHAP. 6.

This manifest in the coalition of independent states.

The same thing is more manifest in the coalition of two independent states into one; where each has reserved certain rights, and exempted them from the cognisance of any person or political council constituted in this coalition, for the governing of the whole. No doubt in cases of great necessity the governors of any state may justly take some extraordinary steps beyond these limits set to them; and they may sometimes without necessity act treacherously against the conditions upon which their power was settled; and in these cases there may be no formal appointment of any method of redress. But the difficulty of obtaining redress does not prove that they had any right

BOOK III. to take ſuch unneceſſary ſteps. And governors, where there are no ſuch limitations, may alter all old laws or articles of agreement for any ſuperior expediency even without any plea of neceſſity, as that power is committed to them; whereas, where there are fundamental laws reſerving certain rights as unalterable, nothing but a manifeſt neceſſity can juſtify any ſteps beyond the limits of theſe laws; otherways all faith in ſuch treaties of coalition is gone.

The caſe is the ſame as in contracts of private partnerſhip with ſome expreſs reſervations. An extreme neceſſity may juſtify the breaking theſe reſervations; and yet no man ſays a partner has as much power without conſent of the reſt, when he is bound by expreſs reſervations, as he would have had if he had been intruſted with managing the ſtock without any ſuch reſervations. The violation of ſuch reſerved rights by governors without neceſſity always gives a right of reſiſtance, and of violent defence or proſecution, to the perſons injured and all ſuch as incline to aſſiſt them.

How governors are ſacred.

II. Governors wiſely exerciſing the powers committed to them, are juſtly ſacred in this ſenſe, "That "they are perſons of high importance to the publick "good, and all injuries or violence offered to them "is more criminal, as it is more detrimental to the "publick, than the like offered to perſons of leſs im-"portance." But every good and uſeful man is ſacred in the ſame ſenſe, whether in the ſame degree or not. The rights of governors, magiſtrates, or clergy, are

no otherwiſe ſacred than thoſe of other men, though ſometimes much more important. God has not by any revelation determined the forms of government, the quantity of power to be committed, or the manner of ſucceſſion, nor has he named the governors of any nations now in the world. His law requires that government ſhould be ſettled; as it requires all other means of publick good. But the form of polity, and the degrees of power to be committed, are left to human prudence. His law the ſame way requires property and confirms the natural and acquired rights of all men. But 'tis left to human prudence to tranſact about them. The ſame laws of nature and revelation confirm to ſubjects their private rights, which confirm the publick rights of governors: and the former ſeem the more ſacred and important, as the latter are plainly deſtined for their preſervation. In different reſpects every adventitious right, private as well as publick, may be juſtly called both the *ordinance of God*, and the *ordinance of man*. CHAP. 7.

Duties toward weak governors.

While governors ſeem to have honeſt intentions, and their adminiſtration tolerably promotes the publick intereſt, tho' they are not eminent in virtue, or free from all faults in their publick conduct, we ſhould have much indulgence to their weakneſſes, conſidering the difficulties and the great temptations in that high ſtate. They are ſtill perſons of great importance to the publick intereſt. Nay as to very worthleſs governors; tho' nothing may be due to them on their own account, yet much may be due on account of

BOOK III. the publick. Violent changes are attended with many dangers and ſome conſiderable evils. They muſt not be attempted, except when neceſſary to avoid or prevent ſome greater evils felt or juſtly to be apprehended from the preſent plan or the adminiſtration of it. While theſe miſchiefs do not ſurpaſs the evils to be dreaded from a violent change, and while there is not a proſpect of ſuch ſuperior good from the change as outweighs theſe evils, it is the ſacred duty of ſubjects toward their country to continue in obedience, and to avoid the evils of civil war. But where it is otherwiſe, and no gentler methods can relieve or ſecure a ſtate from miſery, 'tis a duty incumbent on all toward our country to make all efforts to change the plan, or diveſt ſuch perfidious governors of their powers: all imaginable ſacredneſs of characters is then gone; they ceaſe to be bleſſings, and are become plagues to mankind.

Rights of reſiſting are in all plans.

III. The right of reſiſting a limited monarch or ſenate, uſurping powers not veſted in him by the conſtitution, or invading the rights veſted in ſome political council or aſſembly, which has ſome ſhare in the parts of the ſupreme power, is very manifeſt. But we muſt not imagine that reſiſtance is only lawful in limited governments, where ſome fundamental laws, or contract, or oath taken at the admiſſion of the governors to their office, expreſly reſerve certain rights to the people, and exempt them from their power. In theſe caſes the right of reſiſtance may be leſs diſputable, and all mankind as well as the ſubjects, will

more readily agree about the juſtice of it, and the proper times to uſe it. But in all governments, even the moſt abſolute, the natural end of the truſt is acknowledged on all ſides to be the proſperity and ſafety of the whole body. When therefore the power is perverted from this end to the ruin of a people, either by a monſtrous tyrannical intention, or any ſuch folly or wickedneſs of the rulers as muſt have the ſame effect, the ſubjects muſt have a right of reſiſtance, as the truſt is broken; beſide the manifeſt plea of neceſſity. Not to mention again, that all conveyance of abſolute power, whether to a prince or ſenate, with a preclusion of all rights of reſiſtance, muſt be a deed originally invalid, as founded in an error about what is moſt eſſential in ſuch tranſactions, the tendency of ſuch power to the general good. CHAP. 7.

Reſiſtance imports no civil ſuperiority of the people.

This ſuppoſes no court or aſſembly ſuperior to the king in monarchies, or to the ſenate in ariſtocracies, or to the popular aſſemblies in democracies. It only ſuppoſes that the ſupreme civil magiſtrates or rulers are ſubject to the laws of God and Nature, and are bound by ſome contract, expreſs or tacit, which they entered into upon their admiſſion to the power; and that they have no more power than the conſtitution gave them: and that, ſince all civil power is granted and received avowedly only for the publick good, he who employs it for a contrary purpoſe, by this perfidy on his part, frees the other party from all obligation, and conſequently the ſubjects have the natural right of defending themſelves againſt wrongs. A right

BOOK III. of resistance against injuries imports no civil superiority, nay it is consistent with the lowest subjection. The perfidy of a superior may set his subject free from all obligation to him: and even a slave may have a right of violently resisting a savage and barbarous master, tho' he had been subjected to slavery for the justest reasons.

Who is the judge whether the power is perfidiously abused.

IV. As in all constitutions civil power is acknowledged to be a trust for the publick good, questions may arise whether it be abused or not by such perfidy as forfeits it. We do not here speak of such imprudences or mistakes of rulers as subjects must have expected in any fallible mortals. To bear these patiently, while their great interests are safe, they have tacitly consented, and they are sacredly bound to do so, both out of duty to a ruler in the main good, and to their country. But if the question be, whether the abuses of power are such as are inconsistent with a faithful intention, or so great that they must be ruinous to a people if they are persisted in? one might think that neither of the contending parties will be the most impartial judges in their one cause; but the ruler can have the worse pretensions to judge, as the point questioned is whether he has forfeited his power or not? and to be sure he never will give judgement against himself. To be sure the arbitration of some men of wisdom of some remote nation, which could gain nothing by either side, would not be useless on such occasions. But the people, or such a council of wise deputies as they can trust, and elected by themselves,

have the beſt pretenſions to a right of deciding this queſtion, as 'tis for their intereſt and that of their conſtituents, that all civil power is conſtituted, and not for that of their rulers; and who can ſo juſtly claim to judge of any truſtee, or any perſon impowered to manage buſineſs for others, as theſe perſons themſelves who have entruſted him, and ſupported him for that purpoſe. CHAP. 7.

People have a right in many caſes to revoke powers they granted.

Nay, if upon trial the people find that the plan of power they conſtituted avowedly for their own good is really dangerous to them, they have a right to alter it. It muſt be ſtrange effrontery in any governor, from any views of his own intereſt, or that of his family, to hinder them to change it; or to hold them to a contract which he knows they entered into upon this expectation and expreſs deſign that it ſhould tend to the general good, for which alſo he expreſsly undertook, when it is found to have a contrary tendency. The governor acts as a *Mandatarius*, who, after he had been once employed by others to manage ſome important buſineſs of theirs by a general commiſſion, ſhould refuſe afterwards to receive any ſpecial inſtructions or limitations from thoſe who employed him, or to quit his firſt commiſſion. If he cannot by reaſoning, and explaining the views of his conduct, ſatisfy the people; he may juſtly reſign the troubleſome office, and may inſiſt on compenſation of any damage he ſuſtained, and that his family be ſettled in as good a condition as they were before he was raiſed to this power; and the people are bound to do ſo when it is

BOOK III. consistent with their safety. But to force a people or a great majority of them to continue a form they are dissatisfied with, or to be his subjects whether they will or not, must be strangely absurd; as if millions of men, among whom are thousands of equal knowledge, virtues, abilities, and capacities of happiness or misery, with the ruler, were destined as a property to be managed for his advantage, or pleasure, or vanity, contrary to the avowed end of all civil polity.

There may be great crimes on both sides.

If a prejudiced people become suspicious of their rulers, or of the plan of power, without sufficient cause; and withdraw their obedience contrary to the laws of a good constitution, they no doubt commit a great crime, often attended with horrid consequences. As does also the ruler who will retain a power that is truly dangerous to a people, however it has been conveyed. But when the cause of the suspicion is just, they do a necessary duty to themselves and posterity by making all the violent efforts which are necessary to accomplish a change. And of the justice of this cause there is no common judge upon earth.

Rulers can scarce have a right of compelling the whole body of a people to be subject to them.

But suppose a prince or senate persuaded that there is no just cause of distrusting either the plan of power or their administration; and yet neither any explications or remonstrances of theirs, nor any arbitration can satisfy a people, or a great majority of them, and remove their fears: as a people in continual suspicion and fear cannot be happy, and the publick happiness is the sole end of all civil power, the rulers cannot have a right to retain their power unless they find some means

to remove theſe fears. No doubt men in power may juſtly and prudently take ſome ſteps contrary to the preſent general inclination or approbation of their people, when they cannot ſafely communicate the reaſons of their conduct to all. They may juſtly eſtabliſh a plan which a ſtupid people ſhall not at firſt approve; provided they have all moral aſſurance that upon the diſcovery of the reaſons of theſe ſteps, and upon a full trial of the plan and its advantages, there ſhall be a general ſatisfaction with both. A friend may, in ſome ſingular caſes, take this power of counteracting the ſpecial inſtructions he has received from a friend who commiſſioned him in his buſineſs; nay, may venture juſtly upon ſome uſeful ſervices without any commiſſion at all, or contrary to what he knows his prejudiced friend would allow, not ſeeing the neceſſity of what is done, or the eminent advantages to enſue upon it. But all theſe muſt be ſome tranſitory matters: nothing can juſtify what will occaſion a general permanent ſuſpicion and diſtruſt: as this muſt deſtroy all publick happineſs in any people, who are not already ruined in their minds by their ſlavery, and have not loſt all rational forethought or regard to the future intereſts of their country. Such ſuſpicion and conſtant diſtruſt muſt always remain at leaſt in ſome degree under abſolute hereditary Monarchies and Ariſtocracies, as there is no appearance of ſecurity for the valuable intereſts of a people under them.

IV. Theſe forms of polity alone are juſt which have a natural tendency to promote the general good.

Plans ſeldom give a ſolid right, when they are not well contrived.

BOOK III. If a form is conſtituted which is equally applicable to evil and good purpoſes, without any rational ſecurity about its application to good, ſuch as are all the ſimple abſolute Monarchies, and Ariſtocracies, or rather Oligarchies: the perſons entruſted with the power have a right to uſe it for the publick good while no other plan of power occurs to the ſociety. But they can no longer retain this plan when the majority will conſent to a change, and any part of the people is diſſatisfied with the old plan, and inſiſts upon ſome better ſecurity for the general ſafety. Nay as common ſenſe muſt eaſily ſhew that in ſuch plans no proper precautions are taken againſt the greateſt miſchiefs; as ſoon as any one ſees this, he is bound to conſent to any neceſſary limitations and precautions. That a people have raſhly contracted upon an error in what is moſt eſſential in the nature of the contract, gives no manner of right. It is the moſt direct perfidy, and a breach of the general ſacred truſt of all civil power, in any ruler to oppoſe ſuch limitations and precautions as are neceſſary to prevent the moſt extenſive miſchief. No abſolute hereditary rulers can bind their ſubjects by any oaths againſt all reſiſtance of them and their ſucceſſors; or prevent their right of conſtituting, when they can, ſome proper methods of controll, in caſe of the ſucceſſion of any monſtrous tyrants. They ſhould always remember the ſole end of their power, and that it is the buſineſs and intereſts of the ſubjects, that they are intruſted to manage.

Obligations sometimes to submit to bad plans.

'Tis true, when an imprudent plan is ſettled and there is no hope of ſucceſs in any efforts to alter it, but they muſt probably ſtrengthen the chains; or when the evils apprehended from the continuance of it, and the advantages hoped from the change, are not great enough to overballance ſome terrible miſchiefs to be feared in a civil war, the ſubjects may be ſacredly bound, in duty to their country, to defer their deſigns to ſome more convenient opportunity; and in the mean time to continue in obedience. Even as a good man, in duty to himſelf and his family, is bound to yield his purſe to a robber rather than hazard his life in defending it. The ruler's tittle to the ſubjection of the people, in thoſe oppreſſive and abſurd plans, is no better than that of a robber's to any money he had by force compelled one to promiſe him. Error is as juſt an exception againſt a contract as force. And in theſe abſurd plans there is always this exception, not to mention the ſtrong plea of neceſſity. Where the form indeed is in the main good and the people ſafe under it, tho' there be ſome ſmaller grievances ariſing from ſome of its parts of which the rulers are tenacious, we may judge that they have ſuch external rights to retain theſe parts as a ſelfiſh man has to hold another to an unequal bargain. The people may be obliged to acquieſce for a diſtant utility, or out of duty to the publick; and to prevent greater evils which might enſue upon any violent efforts for a redreſs. But the ruler has no proper right on his ſide which he can uſe with a good conſcience.

BOOK III.

V. When any rulers juſtly conſtituted, and exerciſing their powers well, incur the odium of a great part of a diſſolute people, and rebellions are raiſed againſt them, 'tis no doubt the duty of the other ſubjects to ſupport them with all fidelity. They are in like manner bound to aſſiſt and defend them againſt any unjuſt competitor, or any foreign invader without a juſt cauſe. This is due not only to the very beſt of civil governors, but even to all who have in the main good intentions and fidelity, tho' attended with many weakneſſes, ſuch however as are not everſive of the great intereſts of ſociety for preſerving of which men united. The ſubjects are the more ſacredly bound to ſuch fidelity as the unjuſt competitor or invader gives the very worſt preſumptions of his intentions, and of his future adminiſtration, by his attempts to obtain it.

Obligations on ſubjects to defend their rulers againſt rebellions or invaſions.

But if after all, ſuch a one is ſucceſsful, dethrones the former governor, aſſumes the ſupreme power to himſelf, and is ſo eſtabliſhed in it, that there is little hope of reſtoring the former poſſeſſor without the greateſt bloodſhed and miſchief: if the conqueror ſettles ſuch a plan of power as ſecures the important intereſts of the ſtate as well as they were before, ſo that a reſtoration could do no publick good; it becomes the duty of the former prince to relinquiſh his tittle, as it was ſolely granted to him for the good of a people, which is now become inconſiſtent with it. And the people, conſcious of their preſent ſafe and eaſy ſtate, and that they cannot accompliſh a reſtoration without the greateſt miſchiefs, may juſtly, nay

When they may ſubmit to a conqueror.

are obliged to acquiesce in the present change, and continue the publick happiness by ratifying it. In all these mutual obligations, 'tis absurd to speak of one side as continuing bound, when 'tis made impossible for the other to perform the duties in consideration of which the obligation was constituted. Such events are exceptions understood in all contracts. CHAP. 7.

These tenets do not tend to rebellion.

VI. There is a popular outcry often raised against these tenets of the rights of resistance, as if they must cause continual seditions and rebellions: the contrary is abundantly known. Such mischiefs are more frequently occasioned by the opposite doctrines giving unbounded licence to vicious rulers, and making them expect and trust to the conscientious submission of a people, contrary to nature and common sense; when they are giving loose reins to all tyranny and oppression. 'Tis well known that men too often break through the justest persuasions of duty, under strong temptations; and much more readily will they break through such superstitious tenets, not founded in just reason. There is no hope of making a peaceful world or country, by means of such tenets as the unlimited powers of governors, and the unlawfulness of all resistance. And where the just rights of mankind are asserted and generally believed, yet there is such a general love of ease, such proneness to esteem any tolerable governors, such a fondness for antient customs and laws, and abhorrence of what is contrary to them; such fear of dangers from any convulsions of state, and such advantages enjoyed or hoped for under the

BOOK III. preſent adminiſtration, that it is ſeldom practicable to accompliſh any changes, or to get ſufficient numbers to concur in any violent efforts for that purpoſe, againſt a government eſtabliſhed by long cuſtom and law, even where there is juſt ground given for them. We ſee that they ſcarce ever are ſucceſsful except upon the very groſſeſt abuſes of power, and an entire perverſion of it to the ruin of a people. Mankind have generally been a great deal too tame and tractable; and hence ſo many wretched forms of power have always enſlaved nine-tenths of the nations of the world, where they have the fulleſt right to make all efforts for a change.

In ages of darkneſs, and too often alſo in thoſe of greater knowledge, by the perfidious arts of deſigning princes, and by the baſe ſervility of too many eccleſiaſticks, who managed the ſuperſtition of a populace, by the violent reſtraints put upon divulging any juſter ſentiments about the rights of mankind, the natural notions of polity were eraſed out of the minds of men, and they were filled with ſome confuſed imaginations of ſomething adorable in monarchs, ſome repreſentation of the Divinity, and that even in the worſt of them; and of ſome certain divine claims in certain families, abſtracted from any publick intereſts of the nations to be ruled by them; and upon theſe groundleſs attachments, the beſt blood of theſe nations hath been ſacrificed by the contending factions. No great wonder this, that millions thus look upon themſelves as a piece of property to one of their fel-

lows as ſilly and worthleſs as the meaneſt of them; when the like arts of ſuperſtition have made millions, nay the very artificers themſelves, fall down before the block or ſtone they had ſet up, or adore monkeys, cats, and crocodiles, as the ſovereign diſpoſers of their fortunes. Hence many men of learning too are not aſhamed to ſpeak of patrimonial and deſpotick kingdoms, where millions of men, and all their poſterity too for all ſucceeding ages, are ſuppoſed to be in conſcience bound to a perpetual ſubjection to one of their fellows, to be a piece of property ſubſervient to his advantage or capricious humours, and to thoſe of his ſucceſſors. CHAP. 7.

VII. Civil liberty and natural have this in common, that as the latter is "the right each one has to act "according to his own inclination within the limits "of the law of nature." So civil liberty is "the right "of acting as one inclines within the bounds of the "civil laws, as well as thoſe of nature." Laws are ſo far from excluding liberty, that they are its natural and ſureſt defence. Were there no law of nature reſtraining others from incroaching or uſurping upon the rights of their fellows, there could be no right or enjoyment of natural liberty. And were there no civil laws protecting againſt injuries, and unjuſt force of the ſtronger, there would be no ſecurity of any right in ſociety; as all muſt depend upon the will of thoſe who had ſuperior force. And as one may be ſaid to act freely when he follows willingly the direction of another, having a firm dependance on his ſuperior wiſdom *Liberty civil and political.*

BOOK III. and kind intentions; it may be justly said, that in the strictest polity, where there are very exact regulations of manners, and a constant discipline over all the people, there still remains to them abundant liberty, if they are fully assured of the wisdom and good intention of the laws, and heartily acquiesce in them, tho' they can never counteract them without incurring punishment, and are in a great part of their conduct confined by them to that certain manner which the law prescribes. If indeed civil liberty meant an exemption from the authority of the laws, the best regulated states would allow least liberty.

The Grecian and Roman meaning of a free people.

In our modern plans of laws, where little regard is had to the education and discipline of the subjects, their natural liberty is little confined in any sense; and a people is denominated free, when their important interests are well secured against any rapacious or capricious wills of those in power. The Greeks and Romans seem to have had another precise meaning to the *populus liber*, denoting by that term only *Democracies*, or such forms where the supreme power, or the chief parts of it at least, were in some popular assembly, so that the people in a body had the command, or had their turns in commanding and obeying.

CHAP. VIII.

The WAYS *in which* SUPREME POWER *is acquired; how far juſt.*

I. WE have already ſhown that the only natural method in which ſupreme power can be acquired is the conſent or voluntary deed of the people, and 'tis plain that there is no branch of ſupreme power which cannot thus be conſtituted, whatever *majeſty*, *ſupremacy*, or *dignity*, we can have any juſt conception of (for we do not account for the rovings of an enthuſiaſtick imagination) is nothing elſe than a great many rights conveyed by each one of a great multitude to a prince or a council, or an aſſembly*. No one individual was previouſly ſupreme, or had this majeſty, as no unite is a thouſand. But each one of a multitude conveying ſome of his rights to the ſame perſon or council, may conſtitute this ſupremacy or majeſty, as many unites can make a thouſand among them.

The deed of a people conſtitutes ſupremacy or majeſty.

More particularly, the legiſlative power ariſes by each one's transferring to one perſon or council ſome part of the natural right of liberty he had about his own actions and goods. The executive partly ariſes from the ſame conveyance, and partly from each one's

All civil power can ariſe from ſuch deeds.

* 'Tis well known that the old Romans conceived the *majeſtas* in the people, hence *laeſa majeſtas populi Romani* was the term for treaſon. Flatterers applied it to Emperors, as *ſuſtinentes perſonam populi vel civitatis*.

BOOK III. transferring to the prince or council what right he had in natural liberty againſt thoſe who injured him or his neighbours, to repell the injury, and obtain compenſation of all damages done, and ſecurity for himſelf and others againſt like attempts for the future.

Even that of life and death which is of two ſorts.

The power of life and death is no way ſo divine that it could not ariſe from a deed of the people. No magiſtrate is ſo far lord of human life, that he can of his own right take it away when he pleaſes without a cauſe. He has only theſe two rights about it, one *direct*, and of deſign; when 'tis neceſſary for the publick ſafety to take away the lives of criminals. This right † men had among them in natural liberty. The magiſtrate in place of the perſon injured, or in the name of the ſociety, takes this neceſſary precaution againſt future injuries. The other right is *indirect*, by which the magiſtrate may compell ſubjects to undertake the moſt dangerous ſervices for defence of the ſtate, and even ſuch as may coſt them their lives. Now in natural liberty every one had a right to hazard his life for any very important purpoſe to mankind, ſuch as defending his family, and neighbours, and their important rights; and that in the way that ſhall probably be moſt effectual. Common ſenſe ſhews that, where many are concerned in ſuch violent efforts, 'tis highly neceſſary that they act united and by one council. They all therefore had a right to commit the direction of ſuch violent efforts to one perſon or council; and they could convey to this perſon or council

† See above book ii. chap. 15. § 5.

a right of compelling them, in case they should be refractory, to what they had a right, and even were obliged by the law of nature to do. 'Tis still more obvious how other parts of the supreme power could arise from the same source. CHAP. 8.

'Tis true, the constituting of civil power is the most important transaction in worldly affairs, and hence the obligations to fidelity in it are very high and sacred. But this consideration shews rather more the high obligation on rulers to a faithful administration, than that on subjects to obedience; and makes the rights of rulers rather less divine than those of the people, as the former are destined for the preservation of the latter: tho' the rights of rulers may be of more importance than those of any one particular subject. *The rights of a people as sacred as those of the sovereign.*

II. 'Tis almost superfluous to examine the reasons alledged for some divinity of one form of polity above all others. That one is truly most divine which is most adapted to the publick good. The holy Scriptures do not prescribe one form for all nations: and they seem least of all to favour the admired plan of absolute hereditary monarchy. The law of nature requires the doing whatever most tends to the good of mankind, as far as human prudence can discern: and no doubt obliges too to constitute the best sorts of polity. But it enjoins this no more specially, than it enjoins the use of the most salutary food, rayment, exercise, and the chusing the most useful employments, and most convenient forms of architecture: and has *How any form of polity is divine.*

BOOK III. left theſe things to be found out by human ſagacity, no man thence dreams that all men are confined to one ſort of food, dreſs, exerciſe, or architecture; and that they are criminal who vary from it, tho' they do not apprehend its ſuperior conveniency. Juſt ſo as to the models of government: the original plan of power ſhould be the beſt that men can contrive: and they who conſtitute it have the power by ſome deed or original law to appoint the manner of its continuance, or the order of election or ſucceſſion to it.

Divine rights of ſucceſſion are ridiculous.

III. A divine right of ſucceſſion to civil offices is ridiculous. In private fortunes, the law of nature does not appoint undivided inheritances falling to one. Some civil laws of this kind are monſtrous. Nature makes frequently many co-heirs in private fortunes*, to wit, all who are equally near to the deceaſed in conſanguinity: and would ſometimes admit collaterals and aſcendants together. The lineal ſucceſſion †, where one always repreſents the deceaſed, is a mere human contrivance, for political views of having one enabled to ſupport the civil or military offices, and do the publick ſervices formerly incumbent on the deceaſed. Primogeniture gives no right to this, except by poſitive laws; and they are monſtrouſly unjuſt when they give the whole inheritance to one of many equally near and equally deſerving. The very plea of ſupporting a publick office or political dignity ſhould only entitle to a larger ſhare, a double portion perhaps.

* So did the old Roman law, ſee *Inſtit. l.* iii. *tit.* 1——6.

† See Novel. 118.

But no reaſoning can be drawn from private fortunes conſtituted for the good of one family, to the power over ſtates and nations, not deſtined for the private intereſt of one family, but for the good of nations.

The lineal ſucceſſion not founded in nature.

The only colour of right in ſucceſſions to any civil powers conſtituted by the deed of the people, muſt be derived from the deed of the people. And we have already ſeen how many juſt pleas a people may have to revoke ſuch deeds. The lineal ſucceſſion ſettled by civil laws may be clear, and prevent all diſputes about the perſon who is next repreſentative according to thoſe laws: * but the laws themſelves have no natural foundation of juſtice. If primogeniture or ſeniority be allowed as one natural reaſon of preference; tho' 'tis not eaſy to ſhew why it ſhould be ſo in the ſucceſſion of brethren to a brother, as well as of children to a parent; or why it ſhould take place of manifeſtly ſuperior merit: yet this cauſe of preference muſt give place to that of ſex in the firſt ſtep; an infant ſon taking before the wiſeſt woman; and yet in the ſecond ſtep or when more diſtant perſons muſt ſucceed, no regard is had to the diſtinction of ſex in theſe perſons, but they take according to the ſex of the deceaſed parent by whom they ſucceed, or according to the parent's ſeniority. Thus a grand-daughter by an eldeſt ſon deceaſed, takes place of a grandſon by a ſecond ſon, nay of the ſecond ſon himſelf. The niece or grand-niece by an elder brother takes place before the nephew by a younger, nay before the young-

* See Locke on Government, book i. ch. 11.

BOOK III. er brother himſelf. And thus in innumerable other caſes.

Hereditary ſucceſſion often is different from the lineal.

If there be any thing divine or natural in theſe matters, one would think the general hereditary ſucceſſion ſhould be deemed ſuch rather than the lineal. In the former perſons ſucceed according to proximity of blood; a ſecond ſon before a grandſon by an elder ſon deceaſed, a younger brother before an elder brother's ſon; and ſo on among remoter relations where there is ſuch uncertainty of the perſons to ſucceed who can pretend either a natural or a divine law? where is the lineal ſucceſſion, even as to private fortunes, ſettled in ſcripture? for about hereditary kingdoms there are no laws. The lineal ſucceſſion is ſcarce to be found among theſe laws which ſettled *circumciſion*, the *marrying of brothers widows*, and *unalienable lands*: and if it were found there, it binds no other nations. Does the law of nature admit of the ſucceſſion of females to civil offices, or of perſons related by females? a Briton affirms, and a Frenchman denies it. Shall couſins or nephews by the mother be admitted, or only thoſe by the father? What ſays any law of God and nature to theſe caſes? We all know our own civil laws; and are ſo inured to them, by long cuſtom, that we almoſt deem them natural.

If any form had been peculiarly divine, the order of ſucceſſion had been fixed.

Had any one form of polity been of divine appointment for all, can we imagine that a good God would have given to mankind unintelligible laws like Draco. He would have named the firſt rulers, expreſſed all the publick fundamental laws, ſpecified the ſe-

veral powers granted, and clearly determined the order of ſucceſſion. Nature ſhews that civil governments cannot generally admit of diviſion with ſafety. The ſucceſſion muſt be undivided: but what determines the line? all this is * human contrivance; either ſome old deed of a people conveying civil power to a prince and his heirs, according to the uſages received in other ſucceſſions, except where the nature of a ſtate requires ſome differences, or ſome old deed of a prince, once veſted with power to appoint an order of ſucceſſion; or who by violence compelled a people to eſtabliſh the order he had appointed.

No right of conqueſt.

IV. Of all that ever obtained the name of right nothing has leſs foundation than that claim called the *right of conqueſt*. If there was nothing elſe as a foundation of right but ſuperior force, it is the right of a pirate or robber to his prey: it is an abuſe of language to call it a right.

No right acquired without a juſt cauſe.

We muſt here recollect what was ſaid above † about violent defence and proſecution of our rights; and about the injuſtice of making captives of all ſorts ſlaves: from the principles there maintained it appears,

1. That in an unjuſt cauſe a conqueror acquires no right he can uſe with a good conſcience, not even by any treaty he extorts by violence. And where the conquered have not reſigned their claim, they have ſtill a right to retake whatever they have loſt, and every neighbour ſtate has a right to aſſiſt them.

* See Mr. Locke on Government book i. ch. xi.

† See above Book II. ch. xv. § 5. And the 3. ch. art. 3. of this book.

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An entire conqueſt never neceſſary to obtain compenſation.

2. In the juſteſt cauſe there is no further right, than after repelling injuries to demand full compenſation of damages, and ſecurities againſt like injuries for the future, by inflicting ſuch puniſhment on the guilty, not on the innocent, as may deter all from like injuries for the future. What is neceſſary for theſe purpoſes may be juſt, but all violence or oppreſſion, not thus neceſſary, is injurious. Now, firſt, injuries are ſtill repelled long before a conqueſt, and indeed full reparation of damages is alſo generally either obtained or voluntarily offered by the unfortunate ſide, before they are entirely ſubdued. If, after this is offered according to arbitration of any impartial judges, the conqueror demands more, or perſiſts in violence in order to obtain more on this head, he ceaſes to have a juſt cauſe. Almoſt every vanquiſhed ſtate can compenſate any damages they have done by the moveables of the ſtate or of the ſubjects, or at leaſt by an annual tribute for a certain term; and they are always willing to make compenſation in this manner, rather than by loſing their independency and becoming a province to another prince or country, or by dividing their territories. And the perſon bound to make compenſation, if he is willing to make it fully, has a right to chuſe out of which of his goods he will make it.

Not to ſecurity againſt future injuries.

And as to ſecurity againſt like offences for the future, the world ſees it is always obtained and always offered before an entire conqueſt. What is allowed to be ſufficient ſecurity againſt a ſtate not yet con-

quered, and retaining yet much of its ſtrength, is ſure- CHAP. 8.
ly ſufficient againſt one entirely defeated and broken. Now delivering up ſome frontier forts, or demoliſhing them, giving up ſhips of war, allowing garriſons of the conqueror maintained at the charge of the vanquiſhed in ſome frontier towns or harbours, are thought in all arbitrations ſufficient ſecurity againſt a ſtate yet in almoſt all its vigour; and how much more ſo are they againſt one almoſt ruined by victorious arms.

Puniſhment ſhould be inflicted on the guilty only.

As to puniſhment; it can with no ſhew of juſtice be inflicted upon the perſons or goods of the whole body of a people, as we ſhewed * above that they are generally innocent, in every reſpect. Grant even all or moſt of the heads of families had been guilty, their lands and other goods are truly the property of wives and children along with them, tho' the heads of families are the natural adminiſtrators for them. The joint proprietors are univerſally innocent, and ſeldom is there any guilt even in one of a thouſand of the heads of families. And yet the ruin or the enſlaving of a ſtate is a ſevere puniſhment on all its members. Puniſhment is naturally deſtined for a general ſecurity to all around. Now the victors aſſuming by force all civil power over the vanquiſhed, is ſo far from giving ſuch ſecurity, that it rather threatens all around with greater evils than they had to apprehend from thoſe who were conquered; and 'tis the intereſt of all around to prevent ſuch conqueſts.

* Chap. iii. of this book art. 3.

BOOK III. If any principles of juſtice led conquerors to puniſh they ſhould inflict puniſhments only on the guilty, and chiefly on the principal cauſes of any injuries they had ſuſtained; and theſe are the princes, or chief governors of the injurious ſtates, and their counſellors. They are the murderers of all who periſh in the wars they unjuſtly raiſed. Were they to ſuffer themſelves, we ſhould have a more peaceable world; they would be more cautious about the juſtice of their deſigns. Bad princes are not reſtrained by the apprehenſion that their ſubjects may be puniſhed.

The principal cauſes ſhould be puniſhed.

If indeed any ſtate has frequently been injurious to its neighbours, and ſhews either ſuch rapacious diſpoſitions prevalent among them for a long time, or have obtained ſuch an opportune ſituation for oppreſſing all around them, by poſſeſſing places ſingularly ſtrong, or ſuch ſtrait ſeas that they can always be maſters of the trade of many neighbouring ſtates: ſo that others cannot be ſecured againſt them but at an intolerable expence of fleets and armies. The neighbouring ſtates have certainly a right to diſlodge them out of theſe faſtneſſes, to diſpoſſeſs them of all forts or harbours near theſe ſtraits; or perhaps ſometimes to force this band of robbers, rather than citizens, to diſſociate, and to incorporate them with themſelves, allowing to all of them whom they cannot convict of crimes to enjoy all the equitable rights of their own ſubjects. But it would be the greateſt folly in the neighbouring ſtates to allow any one prince or ſtate upon conqueſt to obtain the ſame power over

all around which the injurious ſtate had formerly by virtue of its ſituation. CHAP. 8.

V. The ſubjects of an injurious ſtate, tho' they be free from all guilt in theſe publick injuries, may on certain events be liable to compenſation of damages. This ſhould indeed firſt be made by the authors of the injuries out of their private goods; if theſe fail, it ſhould be made out of any publick ſtock the ſtate may have, or the treaſury. And this can ſeldom fail, as it may be ſupplied by new taxes impoſed for this purpoſe. And in this manner, did the cuſtoms of the world authoriſe it, ſhould conquerors demand compenſations. But when compenſation is not conſented to by the injurious, the injured muſt take it by force, the goods of the rulers are the laſt they can reach or ſeize for this purpoſe, and they muſt redreſs themſelves the eaſieſt way they can. *How ſubjects are lyable to compenſate.*

The ſubjects, as they have conſtituted this plan of power, and raiſed thoſe governors to execute it, are naturally * lyable either to compenſate the damages occaſioned by theſe means, or elſe they are bound to deliver up thoſe governors; and to alter any thing in the plan of power that may lead the ſtate to be injurious. They ſhould have their option of either of theſe two, and upon agreeing to either, ſhould enjoy all their rights and liberties.

But as the people are generally averſe for reaſons often very trifling and ſuperſtitious, to give up their governors to juſtice, they are bound to compenſate *The right of ſeizures in war and repriſals.*

* See this claim explained above, chap. 3. art. 8. and *ff.* 9. tit. 1. and 4.

BOOK III.

damages. And this juſtifies the ſeizures made in war of the goods belonging to ſubjects of the hoſtile ſtate, when we cannot obtain compenſation either from the goods of their rulers, or from the publick ſtock of the ſtate. Upon theſe our firſt demands ſhould be for any damage ſuſtained, either by publick council of the ſtate, or by any injurious action of its ſubjects whom it could have reſtrained or obliged to compenſate damages and refuſed it. When we cannot thus obtain it, we have a right to take it from the ſubjects as we can. And let them have recourſe to their rulers for compenſation of theſe loſſes they ſuſtained on a publick account, as they have a juſt right to obtain it from them out of the publick ſtock. As the wealth and power of a ſtate depends on that of its ſubjects, the ſeizing their goods is often the only way we can have of diſtreſſing an injurious ſtate and bringing it to juſt terms of peace.

When the ſtate agrees to juſt terms, the innocent ſubjects, whoſe goods were ſeized, ſhould have compenſation either by reſtitution, or by obtaining the value. If the goods are retained by the captor according to the treaty, they are ſo much received on account of the damage ſuſtained by his country, and leſſen the claim upon the ſtate. In that caſe the ſubject whoſe goods were ſeized has a claim upon his own ſtate for compenſation. If the goods are to be reſtored, or the value be given by the captor, his country has the greater compenſation to claim from the other ſtate on account of thoſe injuries which occaſioned the violent

seizures. The former method is more generally received as to any goods taken in publick wars, tho' compensation is seldom obtained for private losses by seizures.

No tacit convention in wars about future subjection.

VI. 'Tis argued in favour of the right of conquest, "that he who enters into an unjust war tacitly contracts or consents to whatever condition the fortune "of war shall place him in, and consequently when "conquered he is bound to civil subjection to the "victor, or to slavery, when this is the customary "treatment of the vanquished." But this is plainly absurd. The nature of war, and all the professions and declarations made about it on both sides, exclude all conception of any such contract, unless it has been expressly made; as sometimes indeed it has been as to a coalition into one state or civil subjection upon humane terms. Having recourse to arms is a declaration that we will assert our rights, and give none of them up either absolutely or upon any contingency, as long as we can defend them. Nay after the most entire defeat, none imagines it a piece of perfidy that the vanquished rally again; or that people transport themselves to any other part of the world, or get new allies to renew the war. All these steps would be deemed treacherous if there were any such tacit convention apprehended.

Such contract cannot be alleged mutual.

Again there is no presuming that the unjust side have made such a covenant unless the other side also consents to the like terms. Now did ever any man repute the military operations of a state in the just

BOOK III. defence or profecution of its rights as importing a covenant to renounce its independency, fovereignty, or the perfonal liberty of its people upon the event of a defeat? and neither does any fide in any publick war ever own or profefs its own caufe to be unjuft. They do not therefore enter into any fuch contract, nor can they be deemed to have done it, as they always declare the very contrary. Nay pirates and robbers, whatever rights of mankind they forfeit or abdicate by their avowedly unjuft violence, are never fuppofed to contract about their future condition in cafe they are conquered. Nor are their attempts to efcape, or any other violence of theirs deemed perfidy, where they have not given expreſs promiſes.

Or made by a whole people.

The pretences of the contract of a whole people are ridiculous in this cafe, except as to pure Democracies; and in thefe too, for the above reafons, they are groundlefs. In other ftates, not one in an hundred have any hand in any wars undertaken or publick injuries their ftate may have done; and many may not know whether their country is in war or peace, which is generally the cafe of minors and women, and even of many lower heads of families. And yet this wondrous right of conqueft, fupported by a tacit convention, muft fubject them all to a grievous punifhment, a defpotick, or patrimonial government over them and their pofterity to all ages, nay to perpetual flavery.

Suppofe the cuftom of fubjecting the conquered to the abfolute civil power of the victor, or of making them flaves, to be univerfally received, tho' con-

trary to all juſtice; ſuppoſe too that the governors made ſuch expreſs contracts: they could bind no civil ſociety by them nor any perſon but themſelves. By ſuch a contract they manifeſtly exceed their powers, and all the rights which can be preſumed as granted to them in any civil polity. The power veſted in them is only what may probably be uſeful for the general intereſt of their countries. They have no right to deſtroy, alienate, or enſlave, a people, either by abſolute ſales or by bargains upon a contingency. Every ſuch contract muſt be fraudulent on both ſides, contrary to the well known truſt of all civil power, and the known rights of other innocent perſons; and therefore can produce no obligation except upon the perſons of the contractors. A prince or ſenate in the moſt abſolute form has only the right of a *mandatarius* empowered to tranſact for the benefit of others without ſpecial inſtructions. The employers ſuſpecting his perfidy are bound only to this alternative, either to ratify the contract, or if not, to indemnify the other party of any loſs ſuſtained by means of the perſon thus commiſſioned to tranſact for them. Nay in lieu of this it is enough in many caſes if they deliver up this fraudulent tranſactor to thoſe who are injured by him.

VII. Theſe reaſons ſhew that mere conqueſt, even in a juſt cauſe, can ſcarcely give any right of civil power over the conquered nation. Now conqueſt is almoſt the ſole foundation alleged for deſpotick and patrimonial kingdoms, where the prince can ſell, trans-

No deſpotick or patrimonial kingdoms.

BOOK III. fer, or divide the kingdom, or ſubject it to any form of power, or to any perſon he pleaſes: and therefore they may generally be deemed groſsly impious uſurpations upon the rights of mankind.

Grotius and other great men ſuggeſt ſome poſſible but highly improbable caſes in which a patrimonial power may ſeem to have another foundation, in conſequence of ſome * conſent of a people in the utmoſt danger of a maſſacre from ſome barbarous invader, to avoid which, and to induce ſome potent neighbouring ſtate to defend them, and ſuſtain a perilous war againſt the invader; they may ſubject themſelves as far as their rights are alienable to this potent neighbour, and give him a right to rule them in any manner he pleaſes, conſiſtent with humanity, for his own advantage. A crime or great damage done by concurring multitudes may alſo juſtly ſubject them to ſlavery, and forfeit all theſe their alienable rights which may be requiſite for compenſation of damage. But this laſt cauſe can only found a temporary power over the criminals, or the authors of this damage themſelves; their innocent poſterity have all the natural rights of mankind, and that of liberty among the reſt, as ſoon as they have compenſated the neceſſary expences made on their education. And the power over the criminals, or the authors of unjuſt damage, ſhould not be called a civil power even while it ſubſiſts.

As to contracts made in the utmoſt diſtreſs, there can be no more juſt right acquired by them to a prince

* See the caſes mentioned in *Grotius de J. B. et P. lib.* i.

or neighbour-ſtate, than what it would be equitable and juſt to demand in conſideration of the important ſervice done. If much more has been raſhly promiſed, there is a right of redreſs by arbitration, as in all other oppreſſive onerous contracts, where there has been a miſtake on either ſide as to the values. Theſe general ſubmiſſions muſt naturally be underſtood with many tacit reſervations and ſtipulations; that the protection of this potent ſtate ſhall be continued, that the civil power ſhall be exerciſed with humanity, and for its natural purpoſes. Conſenting to ſubjection to one potent ſtate, which exerciſes its power mercifully, does not import a conſent to be transferred to any other weak or impotent one, or to any fooliſh or inhuman tyrant. No right of alienation, or diſmembring, and dividing can be preſumed, upon any ſubmiſſion of one ſtate to another. Nay the pleas of neceſſity may alſo take place, againſt the moſt expreſs contracts, when any thing is attempted which muſt create a great unneceſſary miſery, contrary to what muſt be underſtood as ſtipulated in all ſubmiſſion to any human power. All innocent perſons have always a right to inſiſt on better ſecurities for their ſafety than are given them in any hereditary patrimonial kingdoms; and even criminal parents cannot forfeit this right of their innocent children, or any other natural or acquired right they hold underived from their parents. CHAP. 8.

VIII. If a conqueror, even in a juſt cauſe, compels the conquered people to contract with him and ſubmit to his civil power; as this contract is extorted

How far a conqueror may obtain a right by a ſubſequent contract.

BOOK III. by unjuſt violence he obtains no right which he can uſe with a good conſcience, more than a pirate or robber. His cauſe is now unjuſt, however it was juſt before. And tho' it be a valuable matter to the conquered, that he ſhould now deſiſt from violence when he has obtained all he could juſtly claim by war, (as he always does or may without this civil ſubjection); yet it is what the conquered have a right to. And his not perſiſting in any further violence, which could have been unjuſt, gives him no claim upon them, more than my not killing a man, whom I meet unarmed and defenceleſs in a deſart, gives me a right to his ſervices. But if a conqueror gives protection, as he is bound to do, and a vanquiſhed people deſiſt from arms for ſome time, and in matters relating to common peace and order apply to the victor, or to his courts for juſtice; this ſeems indeed to import a convention of ſubmitting for ſome time and has the full force of a truce, nay may perhaps oblige them not to renew hoſtilities without previous indiction or declaration, and yet the preſent power of the conqueror, making all efforts againſt him dangerous, takes away all cauſe of preſuming any tacit conſent to perpetual ſubjection. Nothing but an expreſs contract voluntarily entred into, without unjuſt force extorting it, can give a right to the conqueror to demand a perpetual civil ſubjection from a people and their deſcendants.

When there is an hearty uncompelled conſent.

When however a conqueror in any cauſe by force retains his power, and yet ſettles ſuch a plan of go-

vernment as sufficiently ensures the happiness of a people, so that without compulsion they are heartily satisfied with it: when the restoration of any former prince becomes impracticable, or at least is so, without new terrible dangerous convulsions, the event of which may be very uncertain; as all the right of the former prince was vested in him, solely for the good of the state, which now plainly requires the abolition of his right; he is highly insolent, and injurious, if he demands that the peace and safety of a whole people be hazarded, or perhaps sacrificed for his grandure: and the people have a right to take the only probable method for their safety by submitting to the conqueror. The conqueror indeed is guilty of a great crime in retaining the power and may be obliged in conscience to divest himself of it: but, in duty to themselves, and to the general safety, the people are obliged by the contract they make with him. In a tract of time the successors of the old prince either quit their claim or become uncapable of the office: Their right extinguishes; and that of the successors to the conqueror may become every way compleat, by the continued hearty consent of the people.

IX. In Monarchies or Aristocracies made hereditary by the old deed of the people, or by the fundamental laws, the right of succession to the offices generally resembles that of fiefs, where the successor holds not in consequence of any deed of his predecessor, since he had no power of excluding him; but he holds, by virtue of the fundamental laws, all the powers and the

How the fundamental laws of succession are to be understood.

BOOK III.

annual emoluments of the office, and that disincumbered of any debts the predecessor contracted; and as there is no natural reason, or equitable foundation in nature, previous to a constitution made by the people, that offices, destined for the service of the publick, should descend hereditarily; all the rights of persons in remainder must solely depend on the fundamental law or original contract.

Where there is nothing specially determined in old laws about the manner of succession to a crown, but in general it is made hereditary. It is presumable that the law intends * the same order of succession that is received in private fortunes, by old custom, except when the nature of the office plainly requires a variation. Thus the kingdom must descend undivided, tho' other inheritances are divided. And it is confined to the descendants of the first prince, unless the contrary be expressly declared.

How to be understood upon the event of forfeiture.

As in the old laws of such Monarchies, seldom is any thing expressly determined upon the event of a forfeiture incurred by mal-administration of one in possession: and yet common sense, and the known intention of the office, must shew that a grossly perfidious administration, contrary to express engagements, and the very end of the trust, must forfeit the right:

* Thus if inheritances are simply hereditary, that is descending to the next in blood, so it is presumed they intended the crown should descend; that is, for instance, to a second son in preference to a grandson by a deceast eldest son; to a younger brother in preference of a nephew by an elder brother deceased: to a grandson by a youngest son or daughter, in preference of all grand-daughters. If the lineal descent is received by custom, so it is presumed they intended the crown should descend.

if the cuſtom be univerſally received in a nation, that in all inheritances whoſoever incurs a forfeiture, or voluntarily abdicates, precludes not only himſelf but all his deſcendants, nay collaterals too; ſo that the inheritance reverts entirely to the ſuperior, or to the perſon, or politick body which granted it; it is preſumable, in all fair interpretation, that this too was the intention of any old fundamental laws or original contracts as to the deſcent of crowns, where nothing is more ſpecially determined upon the event of forfeiture or abdication. In the forfeitures of private inheritances or fortunes indeed, ſuch regulations are contrary to humanity, as theſe fortunes are truly deſtined for the behoof of a family. Wives and children are joint proprietors, tho' the head of the family has the ſole adminiſtration. But the heirs in remainder to crowns have no ſuch equitable plea. The regal office is not in its nature deſtined for the behoof of any family, but is a truſt for the ſervice of a nation, nor is there any equitable foundation to claim that ſuch offices ſhould be hereditary or deſcend according to proximity of blood, or by a line of repreſentatives. Thoſe in remainder have no other claim than from the old deed or law. And it is preſumable that the true intent of it is to exclude all deſcendants at leaſt, and ſometimes the whole family, of ſuch as forfeited; ſince nothing elſe called hereditary deſcends to the poſterity, or to any kinſman of one who had forfeited*.

* An incapacity only juſtifies the excluſion of the perſon incapable. But mal-adminiſtration may exclude the whole line, as they hold only by the old law.

BOOK III. The intention of ſuch old laws is very manifeſt in countries where all inheritances were antiently held as fiefs, conveyed upon condition of the fidelity of every one who ſucceeded, ſo that upon any one poſſeſſor's incurring a forfeiture or abdicating, the fief reverted to the granter as in his former eſtate, without any regard to innocent deſcendants or collaterals. This cuſtom or law, how inhumane ſoever as to private fortunes, ſhews what we are to preſume was the meaning of the old conſtitution of an hereditary crown. And indeed the reaſons of humanity do not hold againſt like forfeitures of political offices deſtined not for the good of a family, but for the publick intereſt. There may however be many reaſons of prudence, and ſometimes of humanity, to induce a nation, upon ſuch a forfeiture, to grant the crown anew to any worthy perſon of the antient family, rather than to a new one, but this is plainly left to the prudence of the nation. A forfeiture is a legal bar to the claims of all deſcendants, ſince they have no other than from the law.

Nothing divine or founded in nature in the lineal ſucceſſion.

X. 'Tis ſurpriſing how one ſhould conceive any thing divine or natural in the right of lineal ſucceſſion; when it is plainly preferable to the ſimple hereditary one only for this, that it is free from uncertainty or debates about the next ſucceſſors. Whereas it is at the ſame time expoſed to ſome vaſt inconveniencies, and cauſes moſt abſurd ſucceſſions, which the ſimple hereditary order would have prevented. For inſtance, by lineal ſucceſſion the crown of a king-

dom in the greateſt confuſions, and requiring the direction of the wiſeſt prince, muſt deſcend to the infant grand-niece by an elder brother's daughter, in preference of the moſt worthy younger brother of mature age and wiſdom. Each one inured to the cuſtoms of his own country confuſedly imagines them natural, without reflecting or conſidering the great diverſities of cuſtoms which have been received in different nations, when yet the crown was hereditary in one form or other, each of which cuſtoms long uſe makes ſomething natural. CHAP. 8.

How forfeitures are incurred and heirs precluded.

XI. As the people have a right of reſiſtance, and of dethroning a prince who is groſly perfidious to his truſt after he comes to poſſeſs it, whenſoever it is neceſſary for the preſervation of the ſtate; we may certainly alſo conclude, that when an heir apparent ſhews before he comes into poſſeſſion either ſuch ſtupidity, or ſuch cruel, and tyrannical diſpoſitions, or ſuch pernicious ſuperſtitions and perfidy, as are inconſiſtent with a faithful diſcharge of the truſt intended for him by the laws, and with the ſafety of the people in their moſt important intereſts civil or religious: they have a right to prevent his coming into poſſeſſion, and thus to prevent all the bloodſhed and other miſchiefs which muſt attend a civil war to dethrone him: ſince ſuch a perſon can give no real ſecurity againſt his abuſe of power, to the very worſt purpoſes when he ſhall obtain it.

What truſts preclude an heir apparent.

In particular, tho' errors in religion, as ſuch, do not make void any civil rights of men; though no

BOOK III. man would forfeit his right by Polytheiſm, Deiſm, or Heathen idolatry, while he held no ſuperſtitious tenets which would make him unfaithful to his contracts, cruel and oppreſſive to his people, or unjuſt in his juriſdiction, or unfit to ſupport the liberty and independency of the ſtate: yet if he obſtinately adheres to ſuch tenets as theſe, "That he ſhall have a divine "right to act as he pleaſes in ſtate affairs, even to "ſell or alienate the ſtate, that he ſhall have a right, "and be obliged in conſcience to extirpate by fire "and ſword ſuch as differ from him in religion, and "that this duty muſt take place of all promiſes or "engagements made by him or his anceſtors to the "people: that he is obliged in conſcience to allow a "foreign prince, under a pretended religious cha-"racter, to exerciſe a great deal of civil juriſdiction "within the ſtate, and over many of its members, and "to grant inveſtitures to many lucrative offices of "great ſecular power, tho' with mock ſpiritual names; "and to prohibit all commerce with any ſubjects of "the ſtate who are interdicted by him:" a perſon holding ſuch tenets, may be more juſtly excluded from ſucceeding to the crown of a free independent nation governed by laws, than a madman or an idiot as he muſt be much more pernicious to the publick.

The rights of a ſtate over colonies.

XII. The ſame doctrine about the rights of conqueſt which holds as to Monarchs, holds alſo as to all bodies politick under any form: and as great invaſions have been made on the rights of neighbouring ſtates by Ariſtocracies and Democracies, as by prin-

CHAP. 8.

ces. We may finiſh this ſubject by conſidering the rights of the mother-countries over colonies. Theſe are ſent with very different views and rights. * Sometimes a nation overſtocked, and not deſiring to enlarge its territories, ſends out a part of the ſubjects well provided, to find new habitations for themſelves, and to found a new independent ſtate, upon which no other claim is retained but that of a friendly alliance. Sometimes colonies of free citizens are ſent to make new conqueſts, with a view that the colony ſhould remain a part of the old body politick, and that it ſhould enjoy the ſame rights with the other parts of the body. Theſe two ways of ſettling colonies are humane and equitable with reſpect to the colony. Sometimes upon a conqueſt or acquiſition made of diſtant lands, a colony is ſent to poſſeſs, defend and cultivate them, that they may be a province to the old ſtate, to be managed for its advantage; ſo that the members of the colony, while they reſide there, ſhall not ſhare in the power or privileges of the antient ſubjects. If any number of citizens voluntarily conſent to theſe terms, and are allowed, when they incline, to return to their mother-country with their fortunes, and enjoy all the rights of other ſubjects, there can be no injury alleged as done to them. But it would be a great hardſhip, not juſtifyable but by ſome great neceſſity, to force any number of ſubjects into a worſe condition in point of right or liberty upon their bold-

* Such was the ſettlement of Lacedemonians at Tarentum under Phalantus, and thoſe of other Grecian ſtates in Italy.

BOOK III.

ly adventuring abroad and ſettling their fortunes in a diſtant land, by direction and countenance of the ſtate to increaſe its dominions or enlarge its trade, or to make laws after they are ſettled in ſuch diſtant places, that ſhall deprive them of any valuable right or enjoyment, which is not deſtructive to the old ſtate, or beneficial to its enemies or rivals.

When it is that colonies may turn independent.

Nay as the end of all political unions is the general good of thoſe thus united, and this good muſt be ſubordinated to the more extenſive intereſts of mankind. If the plan of the mother-country is changed by force, or degenerates by degrees from a ſafe, mild, and gentle limited power, to a ſevere and abſolute one; or if under the ſame plan of polity, oppreſſive laws are made with reſpect to the colonies or provinces; and any colony is ſo increaſed in numbers and ſtrength that they are ſufficient by themſelves for all the good ends of a political union; they are not bound to continue in their ſubjection, when it is grown ſo much more burdenſome than was expected. Their conſent to be ſubject to a ſafe and gentle plan of power or laws, imports no ſubjection to the dangerous and oppreſſive ones. Not to mention that all the principles of humanity require that where the retaining any right or claim is of far leſs importance to the happineſs or ſafety of one body than it is dangerous and oppreſſive to another, the former ſhould quit the claim, or agree to all ſuch reſtrictions and limitations of it as are neceſſary for the liberty and happineſs of the other, provided the other makes com-

penſation of any damage thus occaſioned. Large numbers of men cannot be bound to ſacrifice their own and their poſterity's liberty and happineſs, to the ambitious views of their mother-country, while it can enjoy all rational happineſs without ſubjection to it; and they can only be obliged to compenſate the expences of making the ſettlement and defending it while it needed ſuch defence, and to continue, as good allies, ready to ſupply as friends any loſs of ſtrength their old country ſuſtained by their quitting their ſubjection to it. There is ſomething ſo unnatural in ſuppoſing a large ſociety, ſufficient for all the good purpoſes of an independent political union, remaining ſubject to the direction and government of a diſtant body of men who know not ſufficiently the circumſtances and exigencies of this ſociety; or in ſuppoſing this ſociety obliged to be governed ſolely for the benefit of a diſtant country; that it is not eaſy to imagine there can be any foundation for it in juſtice or equity. The inſiſting on old claims and tacit conventions, to extend civil power over diſtant nations, and form grand unwieldy empires, without regard to the obvious maxims of humanity, has been one great ſource of human miſery.

CHAP. IX.

Of the NATURE *of* CIVIL LAWS *and their* EXECUTION.

I. THE legiſlative and executive are powers exerted within the ſtate: Of theſe in the firſt place.

How far the civil power can regulate religion.

As the end of all laws ſhould be the general good and happineſs of a people, which chiefly depends on their virtue: it muſt be the buſineſs of legiſlators to promote, by all juſt and effectual methods, true principles of virtue, ſuch as ſhall lead men to piety to God, and all juſt, peaceable, and kind diſpoſitions towards their fellows; that they may be inclined to every good office, and faithful in every truſt committed to them in their ſeveral ſtations. It is poor policy merely to puniſh crimes when they are committed. The noble art is to contrive ſuch * previous education, inſtruction, and diſcipline, as ſhall prevent vice, reſtrain theſe paſſions, and correct theſe confuſed notions of great happineſs in vicious courſes, which enſlave men to them. As pious diſpoſitions toward God, a firm perſuaſion of his goodneſs, and of his providence governing the world, and adminiſtring juſtice in a future ſtate by rewarding juſtice, temperance, and all ſocial diſpoſitions, and puniſhing

* This was the aim of the inſtitutions of Lycurgus, Solon, Plato, Numa, and of the old Perſians, according to Xenophon, and of the Chineſe.

the contrary, are the ſources of the moſt ſublime happineſs, ſo they are the ſtrongeſt incitements to all ſocial, friendly and heroick offices. The civil power ſhould take care that the people be well inſtructed in theſe points, and have all arguments preſented to their underſtandings, and all rational inducements propoſed which can raiſe theſe perſuaſions, and confirm theſe diſpoſitions. Truth with equal advantages will always prevail againſt error, where errors have not been rooted by ſuch early prejudices as prevent a fair examination. The magiſtrate ſhould therefore provide proper inſtruction for all, eſpecially for young minds, about the exiſtence, goodneſs, and providence of God, and all the ſocial duties of life, and the motives to them.

No coercive power over the opinions of men.

Every rational creature has a right to judge for itſelf in theſe matters: and as men muſt aſſent according to the evidence that appears to them, and cannot command their own aſſent in oppoſition to it, this right is plainly unalienable: it cannot be matter of contract; nor can there be any right of compulſions as to opinions, conveyed to or veſted in any magiſtrate. He can have no right to extort mens ſentiments, or to inflict penalties upon their not agreeing to the opinions he thinks juſt; as ſuch penalties are no evidences to convince the judgment, and can only produce hypocriſy; and are monſtrous uſurpations on the moſt ſacred rights of all rational beings.

The civil power ſhould appoint proper inſtructors for the people.

But as it is certain from the indolence, and the neceſſary avocations of multitudes, that ſcarce one in

BOOK III. an hundred will ever exercise this right of private judgment vigorously; the far greater number, by admiration of some favourite characters, will always follow such as make high pretensions to superior wisdom. It is therefore the interest of the magistrate and his duty to the state in general to take care that wise and good men be provided and supported to take the leading of such as will be led by some person or other. And by this means, if the magistrates scheme of religion be tolerable, he may always have a vast majority to follow these leaders he has appointed, and thus prevent the influence of dangerous enthusiasts or rogues. It must indeed be a vile unnatural perversion of his office if he attempts a leading about useless and disputable trifles, which are of no moment to form in his subjects dispositions of piety, love and resignation to God, of temperance toward themselves and just and beneficent dispositions toward their fellows. But it must naturally belong to such as are vested with power, and entrusted with managing any funds for the general interest of a people according to their prudence, to take care that such principles as lead to these most useful virtues be fully explained and inculcated upon their people.

But without any persecution.

All this may be done without any restraint or penalties inflicted upon men for different sentiments; nay as men of different sentiments may think themselves obliged to publish them, and convince others; the magistrate can have no right to punish any for publishing their sentiments, how false soever he may

think them, if they are not hurtful to ſociety. Whatever whimſical men may introduce into their ſchemes of religion, while they do not oppoſe the goodneſs of the Preſiding Mind, and his moral providence exerciſed over the world, or any of the principles of the moral and ſocial virtues, they do not oppoſe the end of the magiſtrate's office or the points about which his leading ſhould be employed. It is therefore unjuſt, as no publick intereſt requires it, that men ſhould be puniſhed for following their conſciences in publiſhing even theſe weak conceits which do no hurt to the ſtate, and ſeem to them of importance. It has always been found, where there have been no reſtraints upon men about ſuch tenets, in free ſtates, and where there has been a general toleration of them with good nature; free converſation and argument have gradually abated the bigotry and hot zeal of weak men about ſuch points, and made more juſt ſentiments of religion generally prevail. CHAP. 9.

The publiſhing of Atheiſm or principles directly immoral is puniſhable.

II. As to direct Atheiſm, or denial of a moral providence, or of the obligations of the moral or ſocial virtues, theſe indeed directly tend to hurt the ſtate in its moſt important intereſts: and the perſons who directly publiſh ſuch tenets cannot well pretend any obligation in conſcience to do ſo. The magiſtrate may therefore juſtly reſtrain them by force, as he might any deluded fool or enthuſiaſts who pretended conſcience in invading the rights or properties of others. The magiſtrate has a right to defend the ſtate and its members againſt whatever hurts them, let the pre-

BOOK III. tences of the authors be what they will; and thus has a right to reſtrain ſuch as would by any ſophiſtry corrupt the weak into ſentiments inconſiſtent with their duty to their fellows, or ſuch as are deſtructive of the publick happineſs, by taking away the moſt powerful incitements to all good offices and reſtraints from injury. But as there is little danger that ſuch tenets will ever prevail in a civilized nation where knowledge and arts are encouraged, and as puniſhments inflicted by publick authority, beſide moving the compaſſion of men, ſometimes give an air of importance to the ſilly ravings of an empty fool, and raiſe in the weak ſome ſuſpicions of ſuch ſtrong reaſons on that ſide as no reaſon on the other can anſwer; ſome have looked upon it as a piece of prudence in magiſtrates, where there is no manifeſt danger of the ſpreading of ſuch opinions, to let them alone to the common ſenſe of mankind to be confuted and deſpiſed: giving no truſt to ſuch men as renounce all bonds of conſcience, but only puniſhing when the principles are diſcovered by wicked actions.

But not different modes of religion.

But as to various forms of external worſhip and the different ſchemes of religion, which yet retain the grand moral principles of duty toward God and our fellows, as there is no hope that ever mankind, with their ſtrangely different degrees of ſagacity, and different opportunities, and prejudices of education, will agree about them; perſecution on theſe accounts muſt be the greateſt folly and cruelty. It muſt go to fire, and ſword, and gibbets; otherways different ſenti-

ments will appear. Such perſecution is the moſt horrid iniquity and cruelty, and may often diſpeople a country of its moſt uſeful hands, upon which its wealth and ſtrength depended. It is plainly the true intereſt of a country on the contrary, to be a refuge to all induſtrious peaceable men from neighbouring nations, and to engage all ſuch as we have already to remain with us. Half perſecution does not conquer the diverſities of opinions, it only irritates mens minds and kindles ſeditions, or provokes them to fly to nations where they can find eaſe.

Immoral tenets how cognizable

As to the publiſhing of tenets everſive of the ſocial virtues, or ſuch as deſtroy the ſtrongeſt motives to them, or the holding ſuch tenets as make men ſcruple in their conſciences to perform ſuch civil or military duties as the magiſtrate has a right to enjoin; one muſt allow that theſe matters fall under the magiſtrate's power. That he may reſtrain men from publiſhing ſuch tenets by penalties: and that he may either compell men to perform the neceſſary duty to the ſtate, or to make up the loſs by ſupporting ſuch as are willing to perform it in their places: as to this latter method there can be no queſtion. But there have been ſuch groſs abuſes of this power of reſtraining men from publiſhing the tenets which magiſtrates have reputed dangerous, that it is no wonder many good men are unwilling to allow it: and would grant no more to belong to the magiſtrate than a right to exclude men from all civil power whoſe tenets are oppoſite to any ſocial duties, or everſive of the mo-

BOOK III. tives to them, and to demand ſecurity of their good behaviour; but to puniſh only the practices hurtful to ſociety in conſequence of theſe tenets; and that with as great ſeverity as the bad tendency of them may require.

The great danger of the abuſe of this power.

The poſſible abuſe of alleged right or power does not indeed prove that there is none. And yet the force of party prejudices, and the fury of religious contraverſies is amazing. Scarce any thing more odious than the tenets which the ſeveral ſects of Chriſtians charge upon their adverſaries, while yet any candid mind muſt ſee the charge to be groundleſs againſt moſt of them; and that theſe tenets which have cauſed the higheſt contentions and mutual perſecutions, lead to nothing everſive of true piety or the ſocial virtues. If in any caſe the frequent danger of abuſe would make void a right, it would be in this of puniſhing for the publiſhing of opinions everſive of piety and ſocial virtue; ſince the warm zealots of all ſides * have repreſented all ſchemes of religion oppoſite to their own, oppoſite alſo to all goodneſs.

* All Calviniſts, ſay the zealot Arminians, are blaſphemers, charging all injuſtice and wickedneſs upon God, and taking away the morality of human actions. The Calviniſts in their turn make Arminians blaſphemers and denyers of God's preſcience and providence, making men independent in their actions. All Materialiſts are Atheiſts, ſay ſome warm Metaphyſicians, tho' ſome primitive fathers were of that opinion. Arians and Socinians, are idolaters and denyers of God, ſay the orthodox. They retort upon the orthodox that they are Tritheiſts; and ſo do other ſects; and thus they ſpirit up magiſtrates to perſecute. While yet it is plain that in all theſe ſects there are the ſame motives to all ſocial virtues from a belief of a moral providence, the ſame acknowledgments that the goodneſs of God is the ſource of all the good we enjoy or hope for, and the ſame gratitude and reſignation to him recommended. Nor do any of their ſchemes excite men to vices, except that horrid tenet too common to moſt of them, the right of perſecuting.

III. Where good inſtruction is provided, the next moſt effectual means for promoting all virtues publick and private is the example of thoſe in ſupreme power, and the preferring of virtuous men to all ſtations and offices of dignity, while the vicious are made contemptible. Elections either popular, or partly ſuch, to temporary dignities and offices, promote a general humanity and juſtice in the deportment of ſuch as hope to riſe in the ſtate. The controll of a prince and ſenate upon the imprudence of a populace in elections, would ſeem to anſwer all purpoſes of policy; the popular aſſemblies of the ſeveral diſtricts returning ſeveral candidates for any office, out of which the prince and ſenate might chuſe one. Virtue ever was and will be popular, where men can vote freely. Where all dignities and places of power and profit are in the gift of a prince, a bad one may pervert this power to all miſchief: making them the conſtant rewards of betraying the country, or miniſtring to his ambition, or meaner vices. In the hands of a good and wiſe prince any power is ſafe.

The promoting of men of virtue.

IV. The virtues moſt neceſſary to a ſtate next to piety, which excites to and confirms all the reſt, are *ſobriety*, *induſtry*, *juſtice*, and *fortitude*. By ſobriety we do not mean an abſtinency from all external pleaſures or ſplendour; but ſuch moderate diſpoſitions toward them, as the nobler deſires of virtue and of doing good can always controll, when it is neceſſary for any more important purpoſe. Where ſenſual pleaſures and a ſplendid manner of living are keenly de-

Virtues neceſſary in a ſtate.

Sobriety.

BOOK III. fired, reputed very honourable, and are the grand purſuits of men in power; while a different manner of living by corrupt cuſtom is made matter of contempt; all will be ſacrificed for wealth as the means of theſe enjoyments. Men become needy and venal in all ſtations, and the whole adminiſtration grows corrupt. The intereſts of the country ſhall be ſacrificed to an ambitious prince at home, to foreign nations, or to any invader, by thoſe very perſons who are entruſted to ſupport them.

Induſtry. Induſtry is the natural mine of wealth, the fund of all ſtores for exportation, by the ſurplus of which, beyond the value of what a nation imports, it muſt increaſe in wealth and power. Diligent agriculture muſt furniſh the neceſſaries of life, and the materials for all manufactures: and all mechanick arts ſhould be encouraged to prepare them for uſe and exportation. Goods prepared for export ſhould generally be free from all burdens and taxes, and ſo ſhould the goods be which are neceſſarily conſumed by the artificers, as much as poſſible; that no other country be able to underſell like goods at a foreign market. Where one country alone has certain materials, they may ſafely impoſe duties upon them when exported; but ſuch moderate ones as ſhall not prevent the conſumption of them abroad.

How induſtry is beſt promoted. If a people have not acquired an habit of induſtry, the cheapneſs of all the neceſſaries of life rather incourages ſloth. The beſt remedy is to raiſe the demand for all neceſſaries; not merely by premiums up-

on exporting them, which is often uſeful too; but by increaſing the number of people who conſume them: and when they are dear, more labour and application will be requiſite in all trades and arts to procure them. Induſtrious foreigners ſhould therefore be invited to us, and all men of induſtry ſhould live with us unmoleſted and eaſy. Encouragement ſhould be given to marriage, and to thoſe who rear a numerous offspring to induſtry. The unmarried ſhould pay higher taxes as they are not at the charge of rearing new ſubjects to the ſtate. Any fooliſh notions of meanneſs in mechanick arts, as if they were unworthy of men of better families, ſhould be borne down, and men of better condition as to birth or fortune engaged to be concerned in ſuch occupations. Sloth ſhould be puniſhed by temporary ſervitude at leaſt. Foreign materials ſhould be imported and even premiums given, when neceſſary, that all our own hands may be employed; and that, by exporting them again manufactured, we may obtain from abroad the price of our labours. Foreign manufactures and products ready for conſumption, ſhould be made dear to the conſumer by high duties, if we cannot altogether prohibit the conſumption; that they may never be uſed by the lower and more numerous orders of the people, whoſe conſumption would be far greater than thoſe of the few who are wealthy. Navigation, or the carriage of goods foreign or domeſtick, ſhould be encouraged, as a gainful branch of buſineſs, ſurpaſſing often all the

BOOK III. profit made by the merchant. This too is a nurſery of fit hands for defence at ſea.

Neither luxury nor intemperance neceſſary to publick proſperity.

'Tis vain to alledge that luxury and intemperance are neceſſary to the wealth of a ſtate as they encourage all labour and manufactures by making a great conſumption. It is plain there is no neceſſary vice in the conſuming of the fineſt products, or the wearing of the deareſt manufactures by perſons whoſe fortunes can allow it conſiſtently with all the duties of life. And what if men grew generally more frugal and abſtemious in ſuch things? more of theſe finer goods could be ſent abroad: or if they could not, induſtry and wealth might be equally promoted by the greater conſumption of goods leſs chargeable: as he who ſaves by abating of his own expenſive ſplendour could by generous offices to his friends, and by ſome wiſe methods of charity to the poor, enable others to live ſo much better, and make greater conſumption than was made formerly by the luxury of one. Five families ſupported in ſober plenty may make vaſtly greater conſumption for every good purpoſe, than one living in luxury. Younger children ſettled well with proper ſhares of a patrimony in ſober plentiful families, may conſume more than if an heir lived in all luxury, and the reſt in indigence. And as to ſobriety, it is generally true that it makes the greateſt conſumption. It makes men healthy and long livers. It enables men to marry ſoon and ſupport numerous families. And conſider even one alone: a ſober plentiful conſump-

tion for ſixty or ſeventy years is greater than a rio- CHAP. 9.
tous one of ten or twelve, and of fifty more in beggary. Unleſs therefore a nation can be found where all men are already provided with all the neceſſaries and conveniencies of life abundantly, men may, without any luxury, make the very greateſt conſumption, by plentiful proviſion for their children, by generoſity and liberality to kinſmen and indigent men of worth, and by compaſſion to the diſtreſſes of the poor.

V. High principles of juſtice univerſally prevailing in a nation are of great importance to the general happineſs; not to mention the inward ſatisfactions attending the diſpoſition, it creates univerſal eaſe and ſecurity, as it enſures to each one all his valuable rights and enjoyments, and gives the greateſt encouragement to induſtry, by enſuring to each one the fruits of his labours. Whereas a prevalent injuſtice in the diſpoſitions of a people has all the contrary miſerable effects of animoſities, wrath, fear, ſuſpicion, and ruin, or grievous diſtreſſes to families; and as traders muſt charge on their goods higher prices on account of all the ordinary loſſes of trade, by bad debts, by delays of payment, and the expenſive ſuits they are forced to for obtaining it, the goods of ſuch a nation muſt come higher on theſe accounts to all markets, and be ſold dearer at home, and thus the innocent ſuffer for the guilty: and foreigners who have greater regards to juſtice, are enabled to underſell and engroſs the trade. *Juſtice of the greateſt uſe.*

Every ſtate muſt have courts of juſtice and laws to *Courts of juſtice of eaſy acceſs.*

BOOK III. prevent ſuch miſchiefs. Happy that people whoſe laws are plain and intelligible to every honeſt man without the aid of thoſe whoſe fortunes depend on the intricacy of laws. It is impoſſible to make ſuch a ſyſtem of laws as ſhall take in every poſſible caſe in all its circumſtances, and the imprudent attempting it has occaſioned that perplexity, and thoſe endleſs labyrinths of law, affording ſo many artful and diſhoneſt evaſions, which moſt nations, who have continued long without an entire change of polity, complain of as an unſufferable burden upon the property and tranſactions of their people.

Few laws will do beſt with a prudent plan of judicature.

It is plain that right and property are better preſerved by a very few ſimple laws leaving much to the judges, provided there be a good plan for obtaining wiſe and diſintereſted judges. The Romans in their beſt ages had a large roll of * intelligent men in the law named by the praetor as judges for that year, when he entered on his office; and out of theſe a ſmall number were taken by lot for the deciſion of each cauſe: the party whoſe cauſe appeared juſt was freed from all charges, and the whole expence was caſt on the other ſide, unleſs the judges determined that he had ſuch plauſible pleas as might have deceived an honeſt man. Where it was not ſo, further penalties and theſe very high were inflicted for his unjuſt litigiouſneſs. The great men of eloquence in Rome pleaded gratis, as the lawyers alſo gave their opini-

* Theſe were the *judices ſelecti* who for ſome time were to be all patricians, afterwards to be of the equeſtrian order, and then of both orders.

ons and directions; and this was one of the natural ways of obtaining popularity, and of ſucceeding in elections. But what ſhould hinder in any plan of polity, that out of ſuch a roll the plaintiff and defendent might alſo each for himſelf chuſe a patron or advocate, who ſhould plead without fee from the client; and that he who pleaded the juſt cauſe ſhould be payed by the ſtate for his good ſervice to a citizen. Protection againſt injury, and the obtaining of every juſt claim without charge, ſeems naturally due from the governors of a community to its members; ſince they have reſigned their natural rights into their hands. Judges and juries, to whom we truſt our lives, could always derermine whether the party who loſt the cauſe had any ſuch plea as might have deceived an honeſt man. Where he had not; the penalty for theft is not too high for a litigious proſecution or defence, ſeverity on ſuch crimes is mercy to all honeſt men, who often ſuffer more by them than by thefts and robberies, and that with more vexation. CHAP. 9.

VI. Fortitude and military diſcipline ſhould alſo be as univerſal as poſſible. It is infamous to a country if men of the higheſt ſtations are not generally fitted for the moſt honourable ſervices, the defence of their country in times of danger. As war is a thing accidental, and deſigns of conqueſt are almoſt always injurious, military ſervice ſhould not be a conſtant profeſſion to any; but the whole people ſhould be trained to it to be ready whenever juſt occaſions may require it; and during peace be kept in mind of their *Military ſkill and fortitude.*

BOOK III. diſcipline. All this is practicable where the chief governors allow it. In a war of twenty years, a nation which never maintained above forty thouſand ſoldiers at once, might ſufficiently train four times that number, and make them all good veterans who had ſerved five or more campaigns, by making ſuch a rotation that they never would have above one fifth of new levies incorporated into old regiments. By this too a ſweet relief would be given to thoſe who had ſerved the publick for a certain number of years, that they might return to induſtry and the ſweets of peace.

The great advantages of rotations in the ſervices of war.

By a rotation in the higher offices of command a nation would be well provided in old officers and generals, and not be in the miſerable neceſſity of depending on one or two to command in chief, without any fit to ſupply their places in caſe of death, or to oppoſe them if they turned their arms againſt their country. There would be a ſtock of veterans at home to oppoſe unexpected invaſions, or to ſupply an army at once upon any calamitous defeat. The youth of all orders, where there are more ſons than one in a family, ſhould be obliged to take their turns in ſuch ſervices, and after their term return to their domeſtick affairs. Such reputable virtuous citizens, many of them having valuable ſtakes in their country, would have both greater courage and fidelity than mercenaries for life, domeſtick or foreign, choſen or offering themſelves out of the refuſe of a people, even ſuch as were unfit for any other occupations.

This practicable without great pay.

To ſet ſuch a ſcheme a-foot, at firſt muſt give a

conſiderable avocation from induſtry to a people which formerly had employed mercenaries. But when it was once ſettled would give leſs obſtruction to it than the other method. A ſober virtuous people employed in arms for a few years, would in all little intervals of military ſervice be exerciſing ſome induſtrious arts, and would return to them with delight when their term expired. A thouſand kept idle for forty years, or for all their lives, is as great a loſs to manufactures or agriculture as five thouſand idle for eight years. Nor would military ſervice for eight years create any ſuch notions or habits as would prevent their returning joyfully to peaceful induſtry, in men who knew their fixed term all along, and could have no views of ſupport for life that way, and were choſen from the beſt of the people: eſpecially if they were habituated well to labour in all intervals of military ſervice, while they were ſupported by the publick; and that for ſome publick benefit, ſuch as in draining marſhes, cutting down woods, making roads and harbours, fortifying cities, or making rivers navigable. Such labours, moderately impoſed, would ſtrengthen both their bodies and minds. Hiſtory would convince all men that theſe ſchemes are practicable. But other views than thoſe of defending a country have recommended the uſe of mercenaries.

Independency from foreign power of any kind.

VII. Nothing can be more ruinous to a ſtate than to depend, in the exerciſe of any part of ſupreme power, upon any foreign princes or courts, which may have views oppoſite to its intereſt. We muſt not in this matter

BOOK III. be deluded by names of offices. That perſon or court which levies taxes, decides controverſies about property, or the conveyances of it, either during life or upon the event of death, impoſes fines, or corporal puniſhments, prohibits or commands the taking up of arms, determines or confirms civil rights to lands or revenues, decides the rights of princes, and judges of the obligations of ſubjects to obedience, and aſſumes to exempt them from it, that advances to places of profit and power, is certainly aſſuming and exerciſing the higheſt ſecular powers. The object of them are ſecular and civil. And if the perſon or court act in their own name and not by delegated power from civil ſovereigns, they act as civil ſovereigns; be they popes, colleges of cardinals, high prieſts and elders, convocations or aſſemblies of any kind: and let them inforce their ſentences by what artifices they pleaſe: if they derive not their power from the ſtate, they aſſume a civil ſovereignty. A prince or ſtate which ſubmits to them, gives up to them ſo much of the ſupreme power, and becomes ſubject to an internal or external civil juriſdiction.

If by any religious impoſtures or baſe artifices of ſuperſtition princes or ſtates have conſented to ſuch ſubjection; upon detecting the fraud they muſt ſee that they are no longer bound; as contracts obtained by fraud produce no obligation. And if any ſtate has ſhaken off ſuch a ſuperſtitious yoke, and aſſerted its independency; its governors cannot ſubject it again by any deed of theirs, more than they can alienate

the ſtate, or any part of the ſupreme power, by ſale to a foreign prince with no ſuch mock ſpiritual titles. The changing of names is the common ſtate-trick of all impoſtors. CHAP. 9.

VIII. Things in all reſpects indifferent are not the proper matter of civil laws. It is capricious and unjuſt to limit men by any laws about ſuch matters. The buſineſs of civil laws is, 1. To confirm the laws of nature by ſecular penalties, and proper ways of proſecution upon any violation of them. 2. To appoint the beſt forms and circumſtances of all contracts, diſpoſitions, and commerce, ſo that full proof may be had of the true deed and intention of the parties, and frauds be prevented. 3. They ſhould direct a people in the beſt way of uſing their rights, both for the publick and private good: limiting them to the moſt prudent methods of agriculture, manufactures, and commerce. 4. Where ſome good end is in view, and attainable by very different means, civil law ſhould limit the beſt means, where ſuch limitations will not occaſion ſome other ſuperior inconvenience. And where ſeveral ſorts of means are equally fit, and yet it is advantageous that a whole ſociety agree in ſome one ſet of them, the civil law ſhould fix on this ſet of them, tho' it be no better than ſome others. And it muſt in like manner determine more preciſely what the law of nature orders with greater latitude. *The matter of civil laws.*

Thus it is juſt and proper that civil laws fix the preciſe times for the meetings of courts or aſſemblies for purpoſes civil or religious; inſtitute exerciſes, ap-

BOOK III. point prizes and premiums; fix the proportions, time, and manner in which ſubjects ſhould contribute by their goods or ſervices to the publick intereſt; determine a preciſe time when men ſhould be admitted to manage their affairs as being come to maturity. In theſe and ſuch like matters ſeveral different laws might have anſwered all good purpoſes equally; but they cannot be left undetermined.

External rights and unjuſt advantages muſt often be allowed.

IX. From the very beſt ſyſtem of civil laws many external rights may ariſe, and many advantages may be allowed and confirmed which no man can inſiſt on with a good conſcience: and * many vicious practices go unpuniſhed. Courts of juſtice muſt allow time to both parties to produce their evidence, nor do they know before the trial which ſide has the juſt cauſe. Thus one who is conſcious he has no juſt plea or defence muſt be allowed time; and may cauſe great expences and delays to the other party. Laws muſt require certain formalities and witneſſes as neceſſary to the validity of deeds that frauds may be prevented. Men may take advantage of ſuch laws, and make void ſuch diſpoſitions or teſtaments as they well know to be the real voluntary, and juſt deed of the granter or teſtator, upon defect of ſome legal formality. If indeed there was any thing in ſuch diſpoſitions or teſtaments naturally unjuſt or inhuman, or unreaſonably partial to ſome favourite, while others

* This is plain in caſes of ingratitude; want of piety, inhumanity toward the diſtreſſed, covetouſneſs, and ſuch like. See B. ii. See alſo Barbeyraque's two orations *de beneficiis et permiſſione legum.*

who had equal or better claims are neglected, a man may with a good conſcience take the advantage the law gives him againſt ſuch deeds, provided he does of himſelf whatever is equitable toward others. But when the deed was juſt and humane and equitable, and according to the power of the granter or teſtator, a good man would take no advantage of any informality, as he always muſt carry in his own breaſt a more generous rule, a more candid meaſure of conduct than the civil law of his country. CHAP. 9.

Sanctions of rewards.

X. The ſanctions of laws are the rewards and puniſhments. Rewards have place in all civil laws as well as puniſhments. There is one general reward underſtood, the continuance of the protection of the ſtate and the enjoyments of the advantages of a civilized life. And in many laws there are other ſpecial rewards: ſuch as premiums, and advancements to honour, and to profitable offices, which alſo give opportunities of honourable actions, which are to good men a ſweet reward.

Honours of different ſorts.

Eſteem or honour is either of the *ſimpler kind*, viz. the mere reputation of integrity and ſuch diſpoſitions as fit a man for a ſocial life; or that of diſtinguiſhed *eminence*, ſuch as is due only to great abilities and ſingular ſervices and virtues, or ſuch at leaſt as are above the common rate. To the former, every one who has not forfeited it by ſome crime of a more atrocious nature than is readily incident to men in the main good, has a natural perfect right; ſo it can be no matter of civil reward. The taking it away or ex-

BOOK III. cluding one from the rights attending it, may indeed be a ſevere puniſhment. The magiſtrate has no more power over it than over the lives and properties of the people. He juſtly may take any of them away for a crime deſerving it, but not without a crime. Nor will the opinions of wiſe men follow an unjuſt ſentence.

The magiſtrate can determine external honours not internal.

Our inward eſtimation of the eminent kind will not follow the decree of the ſtate or of the prince, but the opinions we have of the merits of the perſon. The magiſtrate indeed is the proper judge of any outward deference, precedence, or other marks of honour; and his decree gives men an external right to claim them. While the magiſtrate in this matter generally follows the real merit of perſons, honours may be very uſeful in a ſtate. But when honours are conferred without merit, or continued hereditarily to thoſe who are univerſally known to have degenerated from the virtues which procured them to the family, they become deſpicable of themſelves, tho' the power attending them may be courted by the ambitious. Such conduct in any prince or ſtate, in conferring or continuing honours without merit, has a moſt pernicious effect. Such a reverence and deference attends high titles in weak minds that thoſe who enjoy them are often ſcreened from the juſt reſentments of a nation: the moral ſentiments of a people are weakened, when they ſee the moſt ſcandalous vices adorned and attended by what ſhould naturally be always the retinue of eminent virtue.

Hereditary honours have been conferred upon presumption that the posterity of the eminently virtuous, would either by nature, imitation, or good education, prove eminent the same way: and with a design to make the rewards of eminent services more agreeable, as they conferred a dignity upon the descendants of the virtuous. The expectation of such dignity may raise young minds to nobler views suited to their station. If a censorial power, of degrading such as act unbecomingly to their dignity, be vigorously exercised; hereditary honours cannot be intirely condemned as useless. The natural causes of honour or merit may be abundantly seen by what was said above upon the degrees of virtue. But as they are made political rewards, they must not be employed in exact proportion to the degrees of moral goodness, but as they shall most encourage the virtues most necessary to the state.

CHAP. 9.

Causes of hereditary honours.

X. The other sort of sanctions are punishments; the peculiar end of which is the deterring all from like vicious practices, and giving publick security against others, as well as the offender. When this right of punishing which belonged to all in natural liberty, is conveyed in a civil state to the magistrate, he obtains the sole right in all ordinary cases, and has the direct power of life and death over criminals.

The proper end of punishment.

There is just ground of distinguishing *chastisements* from punishments as they are solely intended for reforming the offender, and are not peculiar to magistrates. They may be inflicted privately; whereas *pu-*

Chastisements how different from punishments.

niſhments ſhould be publick, and the crime intimated to all, that they may be deterred from it. Both theſe are diſtinct from the *compenſation* of damage, "which reſpects the repairing any loſs ſuſtained by "another." And men are often obliged to it who had done nothing viciouſly or unjuſtly. * The violence uſed in war has alſo a different end, at leaſt ſuch as is uſed before conqueſt, to wit the defending or proſecuting our rights. What is done after a victory with a view to deter all, would have the nature of puniſhment.

The true principle of heart which ſhould excite a man in inflicting any evils on his fellow-creatures ſhould always be ſome kind affection; generally thoſe of a more extenſive nature ſhould influence the magiſtrate in puniſhments; and thoſe of a leſs extenſive ſhould move men in chaſtiſement, and compelling to compenſation. Nothing can make a good man's own heart approve him in theſe ſteps but a conſciouſneſs that he acted from ſome kind principle, and that ſuch ſteps were neceſſary to ſome ſuperior good. Nay in juſtifying the divine puniſhments we have always recourſe to like conſiderations, which ſhew that they flow from goodneſs; ſuch as the ſupporting the authority and enforcing the influence of his laws calculated for the higheſt happineſs of his rational creatures, which muſt be deſirable to perfect goodneſs it ſelf; as muſt alſo the demonſtrating his love to vir-

* Thus authors diſtinguiſh all theſe four, *Poena*, *Caſtigatio*, *Compenſatio*, and the *Mala bellica* from their different ends.

tue, and his ſteddy purpoſe of reſtraining vice by the moſt powerful motives: and for theſe reaſons we repute the divine puniſhments to be juſt and good. CHAP. 9.

The true meaſure of human puniſhments.

Since the end of puniſhment is the general ſafety; the preciſe meaſure of human puniſhment is the neceſſity of preventing certain crimes for the publick ſafety, and not always the moral turpitude of the actions; tho' this often is proportioned to the detriment ariſing from crimes. But as it is not always ſo, ſome of the worſt vices muſt go unpuniſhed, as we ſaid above; and ſome actions very dangerous to the community, and yet flowing from no great depravity of heart, muſt be reſtrained by great ſeverity: ſuch as inſurrections againſt a juſt prince upon ſome ſpecious pretence of the preferable title of another. As the evils of civil wars are very great, men muſt be ſtrongly deterred from entring raſhly into them. When crimes arguing none of the greateſt depravity are very inviting by hopes of ſecrecy and impunity, the ſeverity of the puniſhment upon thoſe who are convicted muſt by its terror over-ballance theſe allurements: thus theft muſt be more ſeverely puniſhed, even when men are induced to it by ſome ſtraits of their families, than ſome greater crimes flowing from worſe diſpoſitions.

Puniſhments due for publick crimes.

Puniſhments for the publick crimes in the abuſe of power, or uſurpation of it contrary to law, ſhould be more ſevere than for crimes of a more private nature, as the effects of the former are far more pernicious. The ruin of ſome great ſtates has been owing

BOOK III. to too much lenity in puniſhing ſuch crimes of magiſtrates *.

Severe puniſhments are neceſſary too for ſmall guilt whenſoever there is danger of ſuch frequent tranſgreſſions as might be deſtructive to a ſtate in certain exigencies. Thus the deſertion of ſoldiers in a time of war, either from cowardice, or impatience for a peaceful life with their families, muſt be ſeverely puniſhed. In times of peace this is leſs neceſſary; and it is cruel without neceſſity to detain them long in a ſervice grown diſagreeable to them.

Actions flowing from ſome lovely diſpoſitions muſt be puniſhed.

Nay ſome actions flowing from the beſt diſpoſitions muſt be ſtrictly reſtrained when the publick intereſt requires it. Thus an inferior officer of too keen valour may be puniſhed ſometimes juſtly for a brave attempt contrary to the expreſs orders of his general: as the greateſt confuſion would ariſe if inferiors diſobeyed expreſs orders of their ſuperiors upon any appearances of advantage to be obtained over the enemy. As greater evils muſt enſue from relaxing military diſcipline, than can readily upon obedience to the imprudent commands of ſuperiors, which are not plainly treacherous, and ruinous to an army; a good man may ſee it to be his duty to obey ſuch orders as he certainly knows to be imprudent, and to abſtain from wiſe meaſures which his ſuperiors prohibit; unleſs he can prevail upon them by reaſoning to alter their orders. One who acts otherways muſt be pu-

* See Cicero *Off.* l. ii. *c.* 8. and Moyle's eſſay on the Roman Government.

niſhed, as laws muſt regard the diſtant effects of actions upon the whole body.

Internal deſigns not puniſhable.

XII. Internal deſigns not diſcovered by action, tho' they could be proved, are ſeldom puniſhed in milder governments. Men may project and talk of deſigns, who are not wicked enough to execute them. When by expreſſing ſuch intentions and defending them, they may have corrupted others, they may juſtly be puniſhed; and the magiſtrate may always juſtly demand a ſecurity for the good behaviour of ſuch as have entertained them. When the deſign is come to action, and to ſuch efforts as might have been ſucceſsful, had they not been defeated by ſuperior force or accident, the criminal deſerves the ſame puniſhment, whether he ſucceeds in his attempt or not, as the ſame depravity is diſcovered, and the ſame danger to ſociety from his future attempts. Thus one who gave poiſon, or who diſcharged a gun at his neighbour with a deſign on his life is to be puniſhed as a murderer be the event what it will.

A power of diſpenſing with the ſanctions neceſſary.

It is proper that in every ſtate there ſhould be a power of diſpenſing with the ſanctions as to ordinary crimes, when ſingular reaſons occur for it, and ſufficient ſecurity againſt like crimes can be otherways obtained. But for crimes of magiſtrates againſt the publick rights of a people, or for groſs abuſes of power, or attempts againſt the plan of polity to encreaſe their own power or influence there ſhould be no impunity.

The publick intereſt may ſometimes require the

BOOK III. giving impunity, nay rewards, to ſome who have been guilty of the worſt of private crimes, to employ them in ſome neceſſary ſervices. Thus to break all faith in bands of robbers or pyrates, and deſtroy all mutual confidence among them, pardons, and even rewards are juſtly given to ſuch as betray the band, or deliver up any partners: as by ſuch conduct ſuch confederacies againſt mankind are broken without effuſion of innocent blood; tho' the worſt of the party may moſt readily take the advantage of betraying their partners, from theſe hopes.

The undue reſpect of perſons in judgment.

XIII. That *reſpect of perſons*, which is unjuſt in judgment, conſiſts in regarding ſuch circumſtances of them as neither affect the guilt of the action, nor its importance toward any publick detriment, nor the quantity of the ſuffering. As when men are differently puniſhed on account of kindred to the judge, of being zealous for his party or faction civil or religious, or of prior benefits conferred, or ſervices promiſed or expected; while yet the guilt and detriment to ſociety is equal. But circumſtances ſhewing greater or leſs guilt, or rather greater or leſs tendency to the detriment of ſociety, or ſuch as encreaſe or diminiſh the ſenſe of the puniſhment, ſhould be conſidered as far as human courts can do it, to make the ſentences well proportioned and juſt. In *pecuniary fines* the ſums exacted from different perſons for the ſame crimes or equal ones, ſhould be in proportion to the wealth of the criminals.

The ſum which is ſevere upon the poor may be a

trifle to the wealthy. In *corporal* punishments, the weakness of the criminals should alleviate the punishments: and infamous punishments should be lessened as the sufferers are in greater dignities. For thus alone the sense of suffering shall be equal for equal crimes. CHAP. 9.

How far a state should proceed in the increasing of punishments. Tortures are pernicious.

It may justly be questioned however, whether in increasing of punishments on account of horrid crimes, there be not a certain pitch of suffering beyond which nothing severer should be inflicted. If death is the penalty of any deliberate murder or robbery, one's indignation would move him to inflict something worse upon the more horridly cruel murderers, and to torture such as had tortured others; or to use tortures where the gentler kinds of death inflicted seem scarce sufficient to deter men from the crime. But on the other hand, horrid spectacles of torture, especially if they are frequently presented, may have a very bad effect upon the minds of spectators. They may harden their hearts, and abate the natural sense of compassion by overstraining it, and make it lose its force; as we see in the overstrained fibres of the body. Beside the terrible efforts they may tempt wicked men to in their robberies, to secure themselves against conviction, or to avenge themselves for the sufferings of their fellows. We may find perhaps that nations where they are used have seldom so tender feelings of humanity as those where they are not. And that an easy death, with any subsequent infamy upon the carcase that may affect spectators, without causing

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any real misery to the criminal, may sufficiently answer the purposes of human justice. If tortures are ever allowed, they must be very rare.

Who are liable to compensate damages.

XIV. No man should be punished for the crime of another; nor is any one liable to compensation of damage who did not contribute to it by some action or omission contrary to his duty, nor shared in any gain by it, nor occasioned it by any contrivance or action destined for his own advantage. As children are truly joint proprietors with their parents in the stock of the family; and have a most sacred claim not only for maintenance, but a comfortable subsistence, upon that stock as far as it will afford it, and the parent bound to furnish it out of this stock: it seems plainly unjust that the whole should be forfeited by the crime of a parent; not to mention also the just and strong claim of the wife, even that of a fair purchaser by the fortune she brought, or by her own industry in improving the common stock. It is true the parent may be the natural administrator, or manager for the company, and thus his debts contracted prudently or imprudently always affect it, nay his prodigality may squander it all. But in many civilized nations, this natural joint right of the whole family is recognised by the civil laws; by allowing an inhibition or interdict upon an extravagant or imprudent parent * at the suit of the children or any proper person in their name. And this is plainly according to jus-

* Thus the estate was *res familiaris* among the Romans; hence also the *jus suitatis* in the children.

tice and natural equity. It is ſcarce therefore defencible with any ſhadow of juſtice, that civil laws ſhould appoint a puniſhment on the guilty which equally or more ſeverely affects the innocent.

The puniſhments of corporations.

XV. As to the puniſhment of corporations, the following maxims ſeem juſt. 1. If all the guilty, or as many of them as are ſufficient for compenſation of damage and a publick example, are found, nothing can be further demanded from the corporation.

2. When this cannot be obtained, no innocent man ſhould be puniſhed in his perſon or any private fortune of his he holds independently of the corporation, for any crime of its magiſtrates or other citizens.

3. As merit and demerit are perſonal and not properly reſiding in corporations; if all the criminals are dead or baniſhed out of it, no puniſhments can be juſtly inflicted on it or its members. Puniſhments or fines exacted out of the publick ſtock have not the proper effect intended. Bad men feel and are deterred only by what ſhall affect themſelves. They are not moved by the ſufferings of communities.

4. As to compenſation of damages; when it cannot be obtained from the criminals, it next falls upon any in power who by groſly culpable negligence ſhared in the guilt, and it ſhould be levied out of their private fortunes. If theſe fail, the common ſtock of the corporation is liable, and where this fails it may be exacted out of the private fortunes of its mem-

BOOK III. bers; for the ſame reaſons alleged above * in the caſe of conqueſt in a juſt war.

5. As corporations have generally ſufficient power to reſtrain their members from injuries, the governors ſhould be obliged to give ſufficient ſecurity againſt future injuries, and ſhould be veſted with further powers if the former were not ſufficient. Nay they may be diveſted of any ſuch privileges as are apt to be abuſed, when no other ſufficient ſecurity can be obtained againſt their being abuſed to the detriment of the publick. But without ſome great neceſſity, or when other ſecurities can be obtained, it is very unjuſt to deprive a large innocent body of men of any privilege of importance to them upon the crime of a few, or even of their magiſtrates.

6. As to any rights which ſmaller corporations enjoy as parts of a great body politick and with relation to it, ſuch as a right of repreſentation in the ſupreme council; no mal-adminiſtration of even the magiſtrates or councils of ſuch corporation ſhould forfeit a right of importance not only to all the innocent members, but to the whole ſtate.

7. Bodies incorporated merely for trade and for the benefit of a few partners, may † juſtly be deprived of their privileges upon their non-compliance with the terms or conditions upon which they were granted. And the corporation may be diſſolved.

What taxes or tributes moſt eligible.

XVI. As to taxes for defraying the publick expences,

* See above ch. viii. art. 5. of this book.

† This is a *poena conventionalis*, diſtinct from the proper *poena univerſitatis*.

theſe are moſt convenient which are laid on matters of luxury and ſplendour, rather than the neceſſaries of life; on foreign products and manufactures, rather than domeſtick; and ſuch as can be eaſily raiſed without many expenſive offices for collecting them. But above all, a juſt proportion to the wealth of people ſhould be obſerved in whatever is raiſed from them, otherways than by duties upon foreign products and manufactures, for ſuch duties are often neceſſary to encourage induſtry at home, tho' there were no publick expences.

The great uſe of a cenſus.

This proportion can never be obſerved without a *cenſus* or an eſtimation made of all the wealth of private families at frequently recurring periods, once in five, ſix, or ſeven years. How practicable this is, may be ſeen by the Roman laws. It would detect perhaps a few broken merchants and men of buſineſs, and both turn them out of trade and prevent their opportunities of defrauding more creditors; and this is all the harm it would occaſion. For men of prudence and good conduct, whoſe ſtocks were loſt by accidents, they would ſtill be truſted by their friends: and yet incautious raſh projectors, without any fund for their buſineſs, would loſe opportunities of fraudulent bankruptcies, and of many injuries now too common.

By a *cenſus* all would be burdened proportionally to their wealth; and thus the publick expences be oppreſſive to none beyond his neighbours. In land-taxes, gentlemen in debt are immoderately oppreſſed, beyond thoſe of clear eſtates; and moneyed men con-

BOOK III. tribute nothing. Duties and excises, however the merchant or other wealthy trader first advances them, yet are at last paid by the consumer. The hospitable generous men, or such as have numerous families supported genteely, bear the chief burden here, and the solitary sordid miser bears little or no share of it.

Obedience active or passive.

XVII. To these rights of governors correspond the obligations on subjects to obedience active or passive, as we shall shew more particularly in a few observations.

1. When the command of a governor is truly just and wise, and within the power committed to him by the constitution; a subject is always bound to obey notwithstanding of any private inconveniencies or danger to himself; and that even in conscience, tho' he could artfully evade the penalties of the law. This holds particularly in paying of taxes and in military service.

Obligations to obey imprudent commands.

2. When the matter commanded is within the power committed to the governor, but he is using his power imprudently in commanding it; if modest representations will not move him to change his orders, and they are only burdensome and dangerous to us in particular and not contrary to any perfect right of the innocent, or injurious to others, it is our duty to obey, tho' the governors sinned in commanding. In war the commander may often be very guilty in imprudent orders given, and inferiors may see that they are not only dangerous to themselves who execute them, but even prejudicial in a small degree to the publick cause. But as dissolving all military discipline must

be a much greater evil to a nation than the loſs that can be readily ſuſtained by executing the imprudent orders; and all diſcipline muſt be loſt where the inferior aſſumes to himſelf to diſobey orders he judges imprudent; it is often the duty of inferiors to execute them while they judge them imprudent. CHAP. 9.

When they may be diſobeyed.

If the orders are judged treacherous, or ſo pernicious that the execution of them would be more deſtructive than breaking through in this caſe the rules of diſcipline, a good man would diſobey, and take his hazard. It is in like manner our duty to pay taxes or tributes, tho' we judge that they are unequally impoſed, and to be applied to imprudent purpoſes, when they are impoſed by that perſon or council to whom that power is committed. There are many commands, civil and military, about the prudence or juſtice of which inferiors are not proper judges, wanting acceſs to the reaſons of them. Upon preſumption of the wiſdom and juſtice of their governors, they may act innocently and virtuouſly, when their ſuperiors are very criminal; and they often owe ſuch obedience to the general intereſt of their country, when they know that the orders are imprudent.

3. But if a ſubject is perſuaded of the injuſtice of a war, or of a ſentence he is commanded to execute in conſequence of an iniquitous law, he ſhould refuſe active obedience, and bear patiently for a good conſcience the ſufferings he may be expoſed to.

When the ruler exceeds his legal power, no obedience is due.

XVIII. But when a governor exceeds the powers veſted in him by the conſtitution, aſſuming ſuch as

BOOK III. are not granted to him; unleſs it be in caſes of ſingular neceſſity, it is always juſt and honourable to oppoſe ſuch uſurpation of power on its firſt appearance, whatever ſpecious pretences are made for it of good deſigns and intentions; as the precedent is dangerous, and will readily be followed in worſe caſes, to the ſubverſion of the conſtitution, and all rights eſtabliſhed by it.

2. Suppoſe the governor does not exceed the legal powers veſted in him, but is abuſing ſome immoderate powers granted him in an imprudent plan of polity to purpoſes everſive of the publick ſafety and liberty; ſubjects may juſtly refuſe obedience, and by a joint reſiſtance oblige him to conſent to ſuch limitations and reſtrictions as are neceſſary for the common ſafety, a private man, when he has no hopes of a ſufficient concurrence of others, muſt fly from oppreſſion or reſiſt it as he can. It would be wrong, without hopes of ſucceſs, to involve himſelf and a few friends to no purpoſe in greater miſchiefs, or to obey commands injurious to others.

Private injuries from a good prince ſhould be borne patiently.

3. Suppoſe the plan of polity good, and a prince alſo in the main faithful to his high truſt, but poſſeſſed with ſome groundleſs prejudice or violent anger againſt any private ſubject, and aiming at his deſtruction without any juſt cauſe: no man can innocently obey his unjuſt orders in deſtroying an innocent man, and one ſhould ſuffer rather than execute them. The innocent perſon thus intended for deſtruction would have a right to all violent methods of defence, even

againſt the prince in perſon, were he only to regard the right of the prince againſt him; but for the ſake of his country, not to deprive it of a prince in the main good, or expoſe it to any great evils which might enſue upon his death; it may be the duty of the ſubject to fly rather than uſe violence, or to be a martyr for his country's intereſt, when he cannot eſcape by flight.

Reſiſtance often lawful.

But to ſay that in no caſe men have a right of reſiſtance, or that in no caſe they can aſſume to themſelves to judge of the commands of their ſuperiors, is monſtrous. All ends of government, all ſafety, all important rights of a people would be precarious, and be loſt without redreſs, as ſoon as ſupreme power came into wicked hands. They who cannot judge of the juſtice of commands given, can ſurely as little judge of titles to ſupreme power. This doctrine therefore muſt for ever eſtabliſh every uſurper who once gets into poſſeſſion. A wicked prince or uſurper, a ſenate, or a few Democratick deputies once in poſſeſſion are for ever ſecure: upon their orders, which none muſt aſſume to queſtion or judge about, their ſoldiers might rob, pillage or maſſacre any whom they ſuſpected; nor could there be any redreſs.

The duty of perſons juſtly condemned.

4. As to perſons condemned to puniſhment according to juſt laws, they ſeem obliged to bear it, and owe to the publick that reparation of the miſchief done by their example. Their declining it by artful contrivances to make an eſcape is ſcarce juſtifyable, tho' it is generally excuſed on account of the great-

BOOK III. nefs of the temptation. As the ſociety has a right to puniſh, they can have none to reſiſt by violence. Nor is it lawful to tempt any officers of juſtice by bribes to be unfaithful in their truſt, or to uſe violence againſt them.

Of thoſe unjuſtly condemned.

5. One condemned upon an unjuſt law or falſe accuſation ſeems to have a right to make his eſcape by any methods which are not injurious to the innocent. Nay as one may have a right of ſelf-defence, or of defending an innocent man by violence againſt any aggreſſor, tho' the aggreſſor was in an invincible error, and ſo innocent too: in ſome caſes the like may be juſt in an innocent man, or in his friends againſt ſome inferior officers of juſtice, when all the detriment ariſing from ſuch efforts ſhall be a far leſs evil than the execution of the unjuſt ſentence upon the innocent, and eminently worthy.

The caſe is much more obviouſly favourable where the laws are notoriouſly unjuſt and oppreſſive toward great numbers; or plain uſurpations upon the natural and unalienable rights of all rational beings. Such are all thoſe which invade the rights of conſcience by perſecution for innocent religious opinions. Had one ſufficient force by the concurrence of others, he would have a right to compell the legiſlator by force to reſcind ſuch unjuſt decrees. Much more muſt he have a right to defend himſelf againſt their tyranny in this point by any violence againſt the execution of ſuch laws when he has probability of ſucceſs.

Thus the general duties of magiſtrates and ſub-

jects are discoverable from the nature of the trust committed to them, and the end of all civil power. Political prudence to exercise the rights vested in magistrates wisely according to the several exigencies of publick affairs, is a most important part of human knowledge, and must be acquired by much observation, and experience in political affairs, by knowledge of the interests and constitutions of neighbouring states, by civil history, and political writings. CHAP. 10.

CHAP. X.

The LAWS *of* PEACE *and* WAR.

I. WAR is the state of those who by violence defend or prosecute their rights: and as sovereign princes and states are in respect of each other in natural liberty, the whole doctrine * above delivered, about the violent defence and prosecution of rights, belongs also to the wars of states, and the just terms of peace among them. *Laws of war among states the same as among individuals.*

Wars are either *private* or *publick*, the former are those of private men in their own names; *publick* are "those wars undertaken by the authority of a state "or its supreme governor on one side at least." When "a war is undertaken by the authority of sovereign "states on both sides," it is called a solemn war, and a sort of † external justice is attributed to it on both *Wars publick or private, solemn or not solemn.*

* B. ii, c. 15. § 5. † See Grot. l. i. c. 3. § 4. thus *justum et purum duellum* is ascribed to both sides, tho' other wars are as lawful. So *justae nuptiae* are not the safe lawful marriages.

BOOK III. sides by the customs of nations; not that there can be true justice upon both sides; or, as if all other wars were morally unjust. To this *bellum solemne* Grotius and his followers require also a previous indiction or *declaration*, after just reparation of wrongs or the fulfilling our just claims has been demanded and refused, according to the old *foecial law* of the Romans. But whatever may be said of the previous demanding our right, which indeed seems necessary on the offensive side, if their affairs can allow it, there is no such necessity after a just demand has been made and refused, that there should be a * previous declaration of war. It is never expected on the defensive side, nor is it always safe to the other, as it may give time to the enemy, and prevent the best opportunity a nation may have of doing itself justice. Nor has any such universal custom obtained even among the more civilized.

Civil wars may be as just as any.

Publick wars but not solemn, are those when magistrates quell seditions and tumults; when two great factions in a state upon some debated point of publick right have recourse to arms. Sometimes one side having the supreme governor's authority, as in Monarchies; and sometimes neither; as when one half of a senate or popular assembly makes war with the other. These are called also civil wars; and in many cases there is as much reason pleading for favour, and all humane treatment in these civil wars, from each

* See Bynkershoek *Quest. Juris Publ.* i. 2.

other and from all other nations, as there can be for both ſides in any ſolemn wars; as both ſides may have as ſpecious reaſons or pleas of juſtice, as can be found on both ſides in the wars between ſovereign ſtates: which muſt appear from the many caſes in which reſiſtance to governors may be lawful; of this hereafter. CHAP. 10.

Laws of war relating to the parties.

II. The laws of war relate either to the rights or obligations on the contending parties toward each other, or toward neutral ſtates who are at peace with both the parties; of theſe in order.

There is one duty incumbent on both with reſpect to each other, and to all mankind around, that when they cannot give previous declarations, they ſhould however give ſubſequent ones, explaining their claims and the grounds of them. The defenſive ſide is obliged as much as the other to make known their defences and exceptions againſt the demands of the aggreſſor. Such declarations are the natural means of letting each other and all the world know, that neither of them are uſing violence, with the ſpirits of pyrates or robbers, without regard to right and juſtice; and they preclude all preſumption of their renouncing the law of nature, or forfeiting the common rights of mankind, if indeed their declarations contain any ſpecious pleas or allegations founded in fact; where it is ſo, the body of the people on both ſides may be innocent in deeming their cauſes to be juſt; nor ſhould thoſe who bear arms on either ſide be reputed infamous, or enemies to mankind: as they ac-

BOOK III. ted under the authority of civil governors, and by their orders, upon fair presumptions of justice.

The just causes of war are proper injuries;

III. In the wars of states, as in those of individuals, we may consider the causes, the time of commencement, and the term to which they may be continued, and the lawful methods of carrying them on.

1. The ordinary just causes are some violations of perfect rights. Our neighbour's innocent increase of wealth or power does not justify our invading him, tho' it should rouse our caution and diligence to encrease our own wealth and power, and to form alliances. If any neighbour indeed appears to be preparing himself for hostilities and conquest, tho' he has not yet committed any injuries; if he is possessed of any singular advantages by situation, or other causes, that states around him cannot be secured but by such continual expences of armies or garrisons as they cannot bear; they may have a right to insist upon something more than verbal securities against injuries, and compel the aspiring state to give it, by surrendering frontier-forts, or demolishing them, or by quitting some other part of their strength.

or apparent danger of them.

2. As among the members of a free state there may be potent reasons for preventing such immoderate acquisitions of a few, tho' made by innocent means, as may be dangerous to the whole body, there are the like reasons why neighbouring states should insist on proper securities for their safety from any one which is exceedingly increasing in power, or they may put a stop to its increase by force. But this is like the

extraordinary rights of neceſſity, which ſtates cannot have recourſe to, if by induſtry, good diſcipline, or any other inoffenſive methods, they can preſerve a proper ballance of power againſt their aſpiring neighbour. An abſolute neceſſity too in ſome caſes may juſtify the uſe of force in demanding what cannot ordinarily be claimed as matter of perfect right *. CHAP. 10.

Defence of others againſt injury.

3. As men in natural liberty have a perfect right to aſſiſt any neighbour againſt injury, ſo have foreign ſtates to aſſiſt any one that is unjuſtly attacked, or that has not force enough to compell an injurious neighbour to fulfil its juſt claims. Nay it is the duty and intereſt of all around to give this aſſiſtance; as the like injuries may be done to others, if the injurious ſtate is allowed to enjoy its prey. This is more eſpecially their intereſt when ambitious deſigns of conqueſt appear, tho' they are not yet turned toward ourſelves.

The juſt commencement and end of hoſtilities.

IV. The time when hoſtilities may juſtly commence is aſſoon as an injurious ſtate has ſhewed the hoſtile or injurious deſign, by violating any perfect right of ours, and refuſing reparation when demanded, or denying to perform what we juſtly claim from it. It is juſt, as well as prudent, to prevent an enemy, and make his country the ſeat of the war; nor are we bound to ſtay till we are invaded.

* It is thus that Grotius defends the wars made by the Iſraelites upon ſome nations which refuſed them a paſſage through their country upon the faireſt offers of peace, and of abſtaining from all injury. And yet no nation, without abſolute neceſſity, has a perfect right to claim this allowance. An army in the heart of a country may be maſter of it, unleſs a ſuperior army be raiſed in its defence; the other hoſtile party will inſiſt on the like right, and thus the neutral ſtate may be made the ſeat of the war.

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The term to which violence may be juſtly continued, is till the danger be repelled, all injuries and expences of war compenſated, and every thing paid and performed which we had a perfect right to claim, and ſecurity obtained againſt like offences or injuries for the future. To continue violence, after all theſe are obtained or offered, is manifeſtly unjuſt, as it is cruel toward the conquered; and is ſo far from being uſeful to mankind, that it is highly pernicious, as was ſhown above about conqueſts.

Force the undiſputed method of warring.

V. The moſt undiſputable method of making war is by open force and violence againſt ſuch as oppoſe us by violence; and this is naturally juſt, as far as it is requiſite to obtain our right, or to diſtreſs the enemy ſo as he ſhall conſent to juſt terms. Such violence or cruelty as is not naturally ſubſervient to this purpoſe, or without which we could obtain our right effectually, and at no greater expence to ourſelves, is truly unjuſt and deteſtable. Such is the murdering of hoſtages or captives in cold blood, and all barbarities toward women and children. Nay, granting that by ſuch barbarities an enemy might ſooner be moved to agree to juſt terms, yet they are naturally unjuſt toward innocents; and are horrid precedents, which may be turned againſt ourſelves, or thoſe in the juſteſt cauſe.

By tacit convention certain ſorts precluded.

Many civilized nations, by a long cuſtom, which ſeem to import a tacit convention, have agreed to abſtain from ſome dark methods of deſtruction, ſuch as poiſoning fountains which ſupply an hoſtile camp,

uſing poiſoned arms to make all wounds mortal, and ſome few others. As the cuſtoms are humane, it is vicious and diſhonourable to depart from them while the enemy is willing to obſerve them; as departing from them may increaſe miſchiefs further than is neceſſary for the purpoſes of war, by deſtroying women, or children, or perſons wounded, who however could have been of no ſervice againſt us; and our enemy may gain as much by ſuch artifices as we can. As to aſſaſſinating of hoſtile princes or generals, there is no cuſtom of nations excluding it, providing it be not done by the corrupting of ſubjects, or ſuch as are under bonds of fidelity, againſt their maſters. It has often been practiſed by civilized nations againſt any hoſtile prince or general, and not condemned. But the bribing a ſubject to aſſaſſinate his own prince, or a ſoldier his own officer, is generally condemned.

Some horrid practices too much indulged by cuſtom.

It is to be exceedingly regreted that while ſome practices not ſo very pernicious ſeem to be generally condemned and counted infamous methods of war, yet a general cuſtom has given impunity to ſome of the moſt horrid barbarities committed againſt enemies. No perſon is puniſhed, or counted infamous in his own country, for murders of cold blood, rapes, butchering of women and children, or any cruelties committed againſt an enemy during a war. Nay ſhould he fall into the enemies hands, he is not proſecuted for theſe crimes, as the enemy is reſtrained by fear of repriſals. There is all reaſon indeed to excuſe great cruelties done in the heat of action, which a cool ſpec-

BOOK III.

tator may see to be unnecessary. This indulgence may be given to human weakness amidst fear and dangers. But for barbarities unnecessarily committed against enemies, when there was no present danger, and in cold blood, it would be honourable, and but a piece of justice in every nation, to inflict the severest punishments on their own subjects for such crimes, and to hear in their courts of justice the complaints of their enemies against them.

How far fraud or stratagems are lawful.

VI. There is some debate how far frauds are lawful in war, and here it is plain that deceiving our enemies, when we have a just cause of war, by any such signs as import no profession of communicating our sentiments to them are stratagems universally justified. Nay, the custom is much received of deceiving enemies even by other signs, such as import this profession when used to a friend. False narrations are generally practised whenever there is any hope of being believed; and men are not blamed as false or perfidious on this account by those who manage the publick affairs of nations. One may allege, that this custom, universally received, is a tacit remission of the right which otherways enemies would have to each others veracity in narrations. But it must ever be a disagreeable method to a candid mind, especially if joined to any professions of friendship.

No deception by treaties can be justified.

And as to all forms of contracts, truces, or treaties, the custom never was, nor ever can be received of deceiving an enemy by them; and such frauds ever will be deemed, as they truly are, highly criminal and

perfidious. Treaties are the only humane way by which wars can be brought to an end and peace restored, without the entire ſlaughter or deſtruction of one ſide; and breach of faith in them muſt take away all their uſe for the moſt ſalutary purpoſes to nations. There is a like obligation on enemies to obſerve all promiſes of ſafe conduct or paſſports given, that good men may be ſecured of the humanity due to them by all, and which is perfectly conſiſtent with the moſt vigorous proſecution of the war. CHAP. 10.

VII. How the private fortunes of ſubjects are liable to the claims of compenſation of damage done by their ſtate, and the foundations of the right of repriſals, were explained upon the ſubject of conqueſts. We only obſerve here, 1. That every ſtate is bound to reſtrain its own ſubjects from injuring any neighbouring ſtate, or any of its ſubjects. 2. When ſuch injuries are done openly, and no redreſs made by the governors of ſuch injurious ſubjects, upon complaints made, this is always deemed a juſt cauſe of war; unleſs the governor ſhew that ſuch ſubjects have ſhook off their allegiance, and are no longer amenable to their laws, and that they give them no protection; for no ſtate is accountable for the depredations made by bands of pyrates who once were their ſubjects. 3. As ſubjects are bound to compenſate damages done by their governors; when the injured cannot otherways obtain compenſation, it is juſt that the injured ſtate take the compenſation due to it or its ſubjects in the eaſieſt way it can, and if that is by ſeizing the goods of the *The juſtice of repriſals.*

BOOK III.

subjects of the injurious state, let them have recourse to their governors, for compensation of what they suffer through their injustice on a publick account.

When the capture is compleat.

The custom is generally received, that moveable goods taken in war, and removed into the enemies forts, or carried to their fleets, and adjudged as legal prizes, are deemed the property, partly of the captors, partly of the state to which the captors are subject, according as their civil laws determine. And this change of property is acknowledged even in the state from which they were taken; so that if they are retaken, the old proprietor is deemed to have no claim; they belong partly to the captor, partly to the state, as civil laws appoint. This is a matter of arbitrary or positive appointment, with a view to encourage subjects on both sides to greater activity in depredations on the enemy.

Laws of Nations respecting the neutral state.

VIII. We come next to consider the laws of war which respect neutral powers; and as there are a great variety of customs received in this matter, we shall only briefly mention the general principles and maxims by which the chief questions may be solved. This head makes one great part of what is called the * publick Law of Nations; some parts of which are obligatory as parts of the Law of Nature, and others

* It is needless to run into logomachies, whether there be any *Law of Nations* distinct from the *Law of Nature*. One may perhaps divide the Law of Nature into two parts, the *private* and *publick*, the former about the rights and duties of individuals, the latter about those of states. The publick, or the *Law of Nations*, may be subdivided into the *absolute* or *primary*, containing the rules founded on natural reason, and obligatory previous to agreements; and the *secondary* or *hypothetical*, founded on custom and tacit convention.

as matter of agreement or tacit convention, and very changeable. CHAP. 10.

The laws of war, with reſpect to neutral ſtates, depend chiefly on theſe few maxims.

They ſhould not be forced to declare on either ſide.

1. No neutral ſtate ſhould be obliged, without it inclines to it, to declare for either of the contending parties, or to favour either in the war, and thus expoſe itſelf to the hoſtilities of the other. There may be a ſtrong obligation of duty, or gratitude, or finer juſtice; but, where there has been no expreſs engagement by contract or treaty, a neutral ſtate muſt be at liberty to act as it pleaſes and may continue its neutrality. The ſame holds as to the two contending parties in a civil war; a ſtate formerly in friendſhip with this divided country is not obliged to declare for, or recogniſe, the juſtice of the cauſe of either. Nor is it to be deemed any breach of friendſhip by the ſide which proves victorious, that the foreign ſtate gave no aid to it while the victory was doubtful, provided that it acted the ſame part toward the other.

The external right to ſpoils taken in war, is a full property.

In conſequence of this a certain external right is ever allowed to be acquired by the captors to all moveables taken in war; and the title is deemed indefeaſible if theſe goods are purchaſed by a neutral ſtate or its ſubjects, ſo that they can never be reclaimed out of their hands by the old proprietors; nor is it deemed a departure from the neutrality that they buy ſuch goods taken on either ſide as once were adjudged as prizes. The purchaſer may not know how the goods were acquired. If they were to be reclaimed

BOOK III. by the old proprietors, and delivered to them; the neutral ſtate would thus declare that the ſeizure was unjuſt and muſt loſe the price payed, or declare war upon the captors. If they refuſed the demand of the old proprietor, while he was allowed to inſiſt on his old right, this would be declaring againſt him and his country. Nay if ſpoils are ſold to other ſubjects of the ſame ſtate from which they were taken, either by the neutral purchaſer, or by the enemy, (as trade is ſometimes allowed by treaty during hoſtilities;) out of favour to the fair purchaſer, as well as to the external right of the captor, the old proprietor cannot claim them. Were it otherways, all trade would be precarious either with the enemy or neutral ſtates.

No ſuch right as to lands violently poſſeſſed.

But as to lands, cities, or provinces taken, as no purchaſer can be preſumed ignorant how the ſeller acquired them, there is no ſhadow of reaſon for allowing ſuch a right in the captor. A neutral ſtate by purchaſing them would preclude the old proprietors, or the ſtate, from recovering by force their old territory; or would force them to declare war againſt the purchaſer. Such purchaſes therefore are always deemed contrary to the neutrality.

Certain effects of violent poſſeſſion of lands, cities, &c.

There is indeed one external right juſtly underſtood as attending the violent poſſeſſion of lands, cattles, or cities; that all ſervices, rents, or other annual payments, due formerly by any perſon or corporation to the old proprietors or governors of them, are now validly payed to and diſcharged by the violent poſſeſſor; ſo that the old proprietor or governor,

if he recovers them again, cannot redemand the ſame ſervices or payments; nor look upon ſuch ſervices or payments, during the violent poſſeſſion, as any infidelity or hoſtility; unleſs they have been offered officiouſly, when they were not exacted by the aſſumed authority of the violent poſſeſſor. CHAP. 10.

But no deed of the violent poſſeſſor can releaſe from any future rents, ſervices, or payments, or diſcharge any ſuch obligations, beyond the annual termly payments during his poſſeſſion; ſo as to preclude the claim of the old proprietor or governor when he recovers his former poſſeſſions. If he has by force or by threatnings compelled a debtor, whether a private perſon or a corporation, to pay fully a debt due to the corporation now violently poſſeſſed, or to its governor in his publick capacity; and that without any colluſion, or fraudulent agreement with the debtor, the debt is * validly diſcharged.

2. "Neutrality can be preſerved only by giving "help to neither ſide in the war, or equally to both." Hence if one ſide is allowed to enliſt volunteers in the neutral ſtate, both muſt be allowed. If troops are hired out they muſt be hired out to both, if both deſire them. And privileges of trade continued to both as they were before the war broke out. Military ſtores muſt be furniſhed to neither without conſent of the other, who may perhaps demand the like ſupplies;

No aid ſhould be given to either ſide, or equally to both.

*See a famous caſe of this kind in Quintilian, *Inſt. Orat.* v. 10. where Alexander, after the conqueſt of Thebes, releaſed a debt due by the Theſſalians to the Thebans, with the deciſion of the Amphyctiones.

BOOK III. ordinarily they are to be ſent to neither. Nor can the neutral ſtate ſend even common proviſions to any city beſieged, or to any iſland or coaſt guarded by an hoſtile fleet of the other ſide. Counterband goods, or ſuch as are thus prohibited, may juſtly be ſeized on the coaſt, when it appears they were deſigned for the enemy.

How prior alliances bind to ſend ſupplies.

If a neutral ſtate has been in an alliance offenſive and defenſive with both parties, and bound to ſend quota's of troops to their aſſiſtance, if the neutrality remains it can ſend troops to neither. If its intereſt allows it to quit the neutrality, it may juſtly ſend troops to that ſide which has the juſt cauſe. All contracts about giving aids in war have always this tacit condition that "the cauſe be juſt." No treaty can bind to aſſiſt in unjuſt violence.

Neutral ſtates ſhould enjoy all commerce with both in common merchandiſe.

3. A third obvious maxim is that "a neutral ſtate "ſhould be precluded from no advantage it enjoyed "by either ſide, on account of the war; except ſuch "as it made by commerce in military ſtores:" all other advantages of trade and navigation it ſhould enjoy with both. Thus the goods of any neutral traders found aboard the ſhips taken and judged prizes, ſhould not be forfeited. The neutral ſtate had a right to freight ſhips from either ſide; and, as it had a like right to hire out its ſhips to both, tho' the enemies goods aboard neutral ſhips are juſtly taken, yet the neutral ſhips cannot be made a prize. Each ſide may have a right to examine the neutral ſhips, and find if any of the enemies goods be aboard: but they have

no right to ſeize either the ſhips, or any parts of the cargo which did not belong to the enemy. CHAP. 10.

There is one right, like thoſe upon a plea of neceſſity practiſed and allowed; that either party in any ſudden exigency may take any neutral ſhips in their ports, upon paying a reaſonable freight for them, to tranſport troops or ſtores upon any expedition.

In like manner no neutral ſtate ſhould loſe any right of mortgage upon the lands or territories taken by either ſide from the other.

4. Another maxim as to neutral ſtates is "that "they have a right to hinder either ſide from com- "mitting any hoſtilities againſt the other, within the "neutral territory or its harbours; and to give pro- "tection to any refugees from either ſide." As the neutral ſtate is maſter of its own territory, its bays, and harbours, it has a right to prevent hoſtilities of either ſide within them; and it is plainly its intereſt to do ſo, as they may be dangerous to itſelf or its ſubjects. The taking of ſhips in its harbours may interrupt or diſcourage the trade, which the neutral ſtate has a right to retain, with both parties. And the diſcharging of artillery may be more pernicious to others than thoſe that are aimed at. It is the part of a common friend to prevent all ſorts of violence of the contending parties, as far as he can; and every ſtate within its own bounds has a right to prevent them. This right is allowed to extend as far as it has a power of commanding by the guns of its forts. Exerciſing force againſt enemies is always looked up-

No hoſtilities are allowed in the neutral ſtate.

BOOK III. on among the *jura majeſtatis*, or parts of ſupreme power which no ſtate has a right to within the bounds of another which is at peace with it.

The protection of deſerters or refugees.

IX. As to refugees from either ſide, a neutral ſtate has a right to protect them for the like reaſons. No foreign prince has a right to exerciſe any juriſdiction, civil or criminal, within the bounds of another ſtate. If he or his ambaſſadors are allowed to reſide in a neighbouring ſtate for ſome time, they retain all their powers and rights in their own country, but have none where they reſide, except what is allowed them by this ſtate; and by the cuſtom of nations there ſeems to be allowed to them a civil juriſdiction over their own retinues, to decide any points of property debated among their own ſubjects. Nay this right is allowed to conſuls, who repreſent not a prince or ſtate, but are agents for merchants at a foreign court, and appointed as judges in civil cauſes by their prince over their countrymen. But as they have no juriſdiction, even in civil cauſes, where foreigners are concerned; and for criminal juriſdiction, it is not allowed either to a * prince or his ambaſſador over their own ſubjects or countrymen reſiding with them in another ſtate, as criminal juriſdiction requires often the uſe of force.

Cuſtoms received as to criminals and bankrupts.

The right and cuſtom of nations is pretty general in this matter. Foreign ſtates are truly obliged by the

* Chriſtina, Queen of Sweden, put to death, while ſhe reſided in France, one of her ſecretaries for betraying her counſels. The French juſtly reſented it as an exerciſing force in their country.

Law of Nature to give no protection to any infamous criminal, or notoriouſly fraudulent bankrupt, who flees to them; they ſhould deliver them up. And yet the ſtate from which they fled has not a right to purſue them by force in the bounds of another country. If a ſtate is zealous to bring them to juſtice, a commiſſion ſhould be demanded from the foreign ſtate, and it is unjuſt to deny it upon proper ſecurity againſt doing any damage to its ſubjects; and then the force is exerciſed by the authority of the governors of that ſtate. But as to ſmaller criminals, or common bankrupts, the cuſtom received is on the merciful ſide toward them; they are generally protected, and ſeldom demanded to juſtice. CHAP. 10.

State criminals always protected.

As to ſtate-criminals; as frequently good men are on both ſides in civil wars and ſtate-factions, as well as in ſolemn wars, the general cuſtom is very humane, that they ſhould univerſally find protection in foreign ſtates; and the refuſal of delivering them up, or of allowing them to be purſued and taken, is never deemed a juſt cauſe of war, if, while they reſide abroad, they are forming no new conſpiracies or hoſtile attempts againſt the preſent governors of their country, who ſhould be ſatisfied with their baniſhment, and loſs of their fortunes, and of the hopes they had in their native land.

The nature of treaties of peace.

X. The natural and humane way of ending wars is by treaties of peace; the nature of which, the juſt terms of them, the obligations, and juſt exceptions, may be ſufficiently underſtood from what was ſaid

BOOK III. upon contracts in the former book, and upon the rights ariſing from the injuries of others; as all ſovereign princes and ſtates are with reſpect to each other in a ſtate of natural liberty.

The exception of unjuſt force precluded generally.

The exception indeed of unjuſt force extorting a contract is leſs to be admitted here than among private perſons, whether the wars are ſolemn or civil to which the treaty puts an end. Were this exception univerſally allowed, all treaties would be vain; no ſtate would regard any promiſes or engagements of another; nor would contending factions have any faith in each other; ſince either ſide, whenever they inclined, could ſtill have this pretence to evade their obligation, that the contract or promiſe was extorted by unjuſt violence; and thus all old contraverſies would revive, notwithſtanding any agreements or renunciations. No terms offered would ſtop hoſtilities. War muſt end only by the deſtruction or entire conqueſt of one ſide.

But not in all caſes.

On the other hand; ſome wars undertaken by princes and ſtates are ſo manifeſtly unjuſt, without any ſhadow of right, which yet prove ſucceſsful, that it would be hard to preclude a ſtate, which had been compelled by ſuch unjuſt violence to conſent to the moſt oppreſſive and iniquitous terms, from all redreſs either for themſelves or their poſterity for ever, tho' they had the moſt favourable occaſion of ſhaking off the unjuſt and cruel yoke. To do ſo would give the greateſt encouragement to unjuſt violence, and make oppreſſion everlaſting without remedy.

We may perhaps juſtly diſtinguiſh, between vio-

lence really unjuſt, and yet founded upon ſuch ſpecious pleas and colours of right, as might have impoſed upon men who truly intended to act juſtly according to the Law of Nature; and that violence which had no ſuch colours of right: allowing a valid obligation to thoſe treaties which were obtained by the former kind of violence; eſpecially when it was conducted honourably, according to the humane cuſtoms of civilized nations, and when the treaties contain no terms manifeſtly inconſiſtent with the plain laws of humanity, and with the ſafety, and theſe natural rights of a people which are neceſſary to ſecure all valuable enjoyments of life. But for treaties extorted by violence manifeſtly and avowedly unjuſt, and containing terms quite inconſiſtent with equity, and all ſecurity or ſafety of the people defeated as to the natural enjoyments of rational creatures, they can produce no obligation.

No preciſe determination of many queſtions.

No doubt after all the deciſions men can give, controverſies may ſtill remain: What are theſe ſpecious colours of right which plead for the validity of contracts extorted by unjuſt force? What ſort of terms are thus inhumanely oppreſſive? where there is no common judge there is no refuge but to mens own conſciences, and ſenſe of humanity, and juſtice, and to wiſe arbitrators, or neutral mediators, under no attachments of intereſt to either ſide.

Diviſions of treaties.

XI. There are many diviſions of treaties; ſome are *perſonal*, entered into out of affection to the perſon of the prince, and ſubſiſting only during his life. O-

BOOK III. thers are called *real*, when they are made with a prince or ruler, as he repreſents and acts in the name of the body politick, which never dies. The obligation of theſe is perpetual, where no limited term of years is expreſſed. Some are *equal*, binding to equal performances, or ſuch as are proportional to the wealth of the ſtates; and others unequal. Of the unequal again, ſome, tho' burdenſome to one ſide more than the other, yet make no diminution of its ſovereignty or independency. Such for example, as bind one ſide to refund the expences of the war, to deliver up ſhips, or frontier towns, or to quit certain branches of trade, or even to pay certain ſums annually. Notwithſtanding of ſuch burdens, the ſtate may exerciſe within itſelf, and with other nations, all parts of the ſupreme power; other unequal treaties diminiſh the ſovereignty: thus if one conſents that appeals ſhall lie in certain cauſes from its own courts to thoſe of the other ſtate, or that it ſhall not make war without conſent of the other. The terms of theſe treaties ſuggeſt the obligations on both ſides.

Hoſtages why in diſuſe.

In confirmation of treaties, in former ages hoſtages were frequently given. But as they can give no ſecurity unleſs a nation were diſpoſed to commit a great piece of barbarity, in puniſhing the innocent hoſtages for any perfidy of their country, to which they had no way contributed; the cuſtom of demanding or giving hoſtages is laid aſide.

The rights of ambaſſadors, &c.

XII. Treaties and confederacies of all ſorts are managed by ambaſſadors, envoys, and plenipotentiaries,

persons employed to transact such matters in the name of a state. The rights of all these persons, according to the Law of Nature, are the same whatever names or external dignities they may obtain, if they are sent to any state in the name of another, great or small, which is not dependent on the state to which they are sent. CHAP. 10.

Their persons inviolable.

This right, in the first place, belongs to all who are sent with any publick messages in peace or war, that their persons should not be violated; but they should either be allowed to reside in safety while they offer no violence, or, if this is refused, to return unmolested. The greatest enemy, even upon the justest provocation, is obliged to listen to proposals from the other side, as his right is not infinite; and there are certain proposals which when made he is obliged to accept of, and desist from hostilities. No proposals could be made if the persons, who carried them, were not allowed protection.

No natural obligation to admit the residence of ambassadors, but it is the custom of all nations.

A state indeed is not obliged by the Law of Nature to allow the ambassadors, envoys, or residents of other states to continue in its territory; such persons always act the part of spies if they are diligent in their trusts: and they may be refused access to it without hostile intention. But as the advantage is equal to both sides against each other, where they are mutually allowed; and as by their means many differences are speedily composed which otherways had broke out into wars; it is now the custom of all civilized nations to allow them mutually, and to give

BOOK III. them full protection while they commit no hostilities, or form no conspiracies against the states where they reside.

What privileges or immunities they have by the Law of Nature.

The Law of Nature ensures to them no other protection, previous to some custom importing a tacit convention, than that which every civilized state gives to its own subjects or to any private foreigner who resides with them for pleasure or commerce. An action would lie against them in the courts of the state where they reside for any debt or crime, as against any private foreigner. And if they were, and continue natural subjects of the state they are sent to, they are justly treated as its subjects still; tho' employed as factors for others. Their employment as it is of great dignity and importance, would indeed entitle them to greater deference and external marks of honour, than they could have claimed in their private capacity: but it gives them no further perfect right without some convention express or tacit.

What by the custom of nations.

But a pretty general consent of civilized nations has given a great number of other privileges and immunities to them, their families and retinues; the settling of which makes a considerable part of the * publick Law of Nations, as it is called, which is founded on tacit conventions, declared by general practice, and by the resentment expressed at any nation which violates it. And yet as to most of these laws any nation by a timely premonition of its neighbours that

* The curious may find them in Wiquefort's *Ambassador*, and Bynkershoek *de foro Legati*, and other authors.

it neither insisted on such privileges to its own ambassadors, nor would give them to those of other nations, might free itself from all obligation; some of them indeed are founded on reasons of humanity; but many others merely on capricious customs, and the vanity of princes. CHAP. 10.

XIII. There are humane reasons for one custom, almost universally received of late, that "ambassadors, "envoys and all who act for nations independent of "the state to which they are sent, * are not subject "on account of their residing in any state, to the "courts of that state, in any action civil or criminal." Nothing more is allowed than barely the necessary defence against any outrage of theirs, or any conspiracy. All right of judging and punishing is referred to the prince or court to which they were formerly subject. There is an equitable reason for extending this privilege beyond the ambassador's person even to all his proper family; such as his wife, children, secretaries and necessary domesticks; since by the want of them, or by any vexatious processes against them, he might be distressed or hindered in his business. If their conduct is offensive they may be ordered to withdraw, and justice be demanded against them from the state which sent them, the refusal of which would be a just cause of war. The reason for the privilege is this, the most vigilant ambassadors do generally most oppose the interests of the courts where they reside, and are the least popular in that country; and there- *Ambassadors to a state not subject to its courts.*

* *Legatus non mutat forum.*

BOOK III. fore would have the worſt proſpect of a fair trial, or of a juſt ſentence upon any civil action or criminal proceſs againſt them.

At the ſame time, if an ambaſſador trades where he reſides, or incurs debts by contracts of merchandiſe, or by bonds; there is little natural reaſon why he ſhould not be ſued and compelled to do juſtice to the ſubjects of the ſtate where he reſides. If he is ſuſpicious of the partiality of the courts, let him abſtain from voluntary contracts. There is ſtill leſs natural reaſon for the immunities of all gentlemen of his retinue in ſuch caſes. It would be highly proper that he gave a liſt of his domeſticks upon his admiſſion, or upon adopting any more into his family; that the ſtate where he reſides might judge how far it was proper to extend its protection to ſuch numerous retinues.

His houſe no ſanctuary by the law of nature.

In like manner, there is no natural reaſon for making his houſe a ſanctuary to any but the neceſſary domeſticks allowed him: much leſs that it ſhould skreen any ſubjects of the ſtate where he reſides from the execution of juſtice, and thus limit the power of the ſtate over its own ſubjects. But ſuch claims have often been made by means of an unneceſſary notion that the ambaſſador repreſents the perſon of the prince who ſent him, and ſhould be treated as ſuch; or repreſents a free and independent ſtate, and muſt have a like independency, immunity from the power of the ſtate he is ſent to, for all who attend him of every character.

The precedency of ambaſſadors.

XIV. From this alſo ariſe the claims of ſuperior dignity, and the precedency of the ambaſſadors of different nations. Theſe are all arbitrary matters, depending on cuſtom or convention. It would be as natural that ambaſſadors ſhould take precedency according to their ſeveral perſonal dignities, if we could well compare the ſeveral perſonal dignities of men of quality, in different nations, with each other. And this indeed is as eaſy as ſettling the dignities of different princes. Names are of no avail in this matter. A duke of Ruſſia or Venice and a duke in Britain, a marquis in Britain and one in France are of very different dignities. The kings of Britain were once of higher dignity than emperors of Conſtantinople, or ſome Weſtern Emperors in Rome. All rights of precedency among independent princes and ſtates, or their ambaſſadors, muſt depend on ſome agreement or old cuſtom. Were we to follow natural reaſon, theſe ambaſſadors ſhould have the higheſt dignity who repreſent the wiſeſt and beſt conſtituted ſtates or polities; as theſe are the moſt honourable bodies politick. Superior force, ſtriking terror in all around, often engages nations to give up theſe matters of ceremony to the moſt potent. Abſolute hereditary Monarchies, and Oligarchies, have the weakeſt pretences to dignity.

CHAP. XI.

The DURATION *of the* POLITICK UNION; *and the* CONCLUSION.

The duration of the political union.

I. THE duration of a political union, and of a citizen's obligation to his country may be determined by theſe conſiderations. 1. As this union is deſigned for the good of all, it is oppreſſive in any ſtate, where it is in no danger of decay, to detain any ſmall number of citizens, who have a rational proſpect of a better condition elſewhere, while the ſtate ſuffers no conſiderable loſs by their departure. It muſt be a wretched plan of polity, or very unfaithfully adminiſtred, which can tempt any great numbers to deſert it, contrary to ſo many ſtrong natural tyes; and in either caſe, if proper remonſtrances cannot obtain a redreſs of ſevere grievances, the citizens have a right to leave it, as the natural conditions, either expreſſed or implied, upon which they aſſociated are broken. To deſert a good aſſociation, wiſely adminiſtred, when it falls into any diſtreſs by foreign force, is highly criminal; and the ſtate may reſtrain its ſubjects by violence, as they are ſacredly bound to ſupport it at all hazards.

When ſubjects are free from the bond.

Men baniſhed for ever, on account of crimes, are no longer ſubjects. But a temporary baniſhment or relegation into any remote province ſubject to the ſtate's juriſdiction, does not take away all right of the ſtate over ſuch corrupt members.

II. While a ſtate can protect all its members, it is under the moſt ſacred obligations to do it. It may indeed under the utmoſt neceſſity, when the whole cannot otherways be ſafe, bind itſelf by contract not to protect any further a ſubject, or a certain diſtrict, demanded by a victorious enemy. But this deed cannot preclude the ſubject, or the diſtrict, from taking any other refuge: their bond is diſſolved. An hero perhaps to preſerve a country would deliver up himſelf a ſacrifice.

How far a ſtate is bound to protect all its parts.

When the majority of a ſtate conſent to change the polity in ſome eſſential parts, upon which the ſafety and proſperity of the ſubjects depended, in compliance with an invader or uſurper, or out of any ſuperſtition or folly; ſuch as diſſent have a right to withdraw with their effects into any other country; or to aſſociate by themſelves: nor can they be retained upon any pretence of the old contract, ſince the eſſential articles are changed without their conſent. A man acts unjuſtly who diſſents from any wiſe and uſeful change of the polity; and yet it would be hard to oblige him by force, without ſome great neceſſity, to remain a citizen.

Certain changes of polity free ſuch as diſſent.

But all real treaties formerly entered into with other nations retain their full force after the change, ſo do all publick debts and claims on both ſides.

III. If a ſtate is by force ſubdued to another, the majority of the conquered have no right to retain any of the old citizens who incline to remove. Any parts of the vanquiſhed ſtate may aſſert their liberty and in-

After a conqueſt the ſubjects are free.

BOOK III. dependency, or unite with any other ſtate they incline. The former bond is diſſolved by the failing of an eſſential condition. It is indeed very unjuſt in any part to deſert the body, while there is any hope of ſupporting it.

If a people once intirely conquered ſhould upon any unexpected emergence ſpeedily recover its independence, it is the duty of all its citizens who have entered into no new political bonds to return to their former union, if the terms of it were equitable. But if they were not, or if any parts have entered into new polities, by contracts againſt which they have no juſt exception; as the former bond was diſſolved by the conqueſt; all their new tranſactions are obligatory, in which they acted juſtly according to the probabilities then appearing to them.

A province long conquered, and recovering its independency, does not acquire all the old rights over other lands.

If a people conquered for ſome centuries, and reduced into the form of a province, ſhould afterwards find an opportunity of aſſerting themſelves into independency again, and that with all juſtice; it would be * ridiculous in them to claim any right in diſtricts or provinces long aſſociated to other ſtates, or ſubſiſting by themſelves; upon any pretence that theſe ſtates or diſtricts were formerly aſſociated with their anceſtors or ſubject to them, when they were a free and flouriſhing ſtate. The conqueſt diſſolved all theſe bonds, and left theſe diſtricts or provinces free to con-

* See a long examination of the vain pretences of Charlemain and his ſucceſſors to all the dignity and rights of the Roman emperors in virtue of an election by the citizens of Rome in *Grotius De J. B. et P. l.* 2. *c.* 8. and in Gronovius and Barbeyraque's Obſervations.

fult their own ſafety. Such claims are ſtill more ridi- CHAP. II.
culous on this account that after a few centuries and the changes which happen upon conqueſts long continued, the people can have little other pretence of calling themſelves the *ſame* with their predeceſſors in that land, than this that they live upon the ſame ſpot of ground where the antient ſtate was. But it is owned by all that as the people or ſtate may remain the ſame in a new climate far from their old lands; nay without any lands, when they are aboard their ſhips or marching through deſarts; ſo the new poſſeſſors of the ſame lands may be a ſtate or people quite different from the old.

When a ſtate is once entirely conquered without a probable proſpect of recovering its independency, all the old conventions of the people about a political union are in the caſe of contracts entered into about what afterward becomes impoſſible to be executed on one ſide, and therefore do not bind the other. The ſame is the caſe of the contracts by which certain diſtricts became provinces upon condition of protection from that ſtate which now cannot protect itſelf.

III. While the political union ſubſiſts, the duties of citizens, which ariſe either from the general relation to their country and fellow-citizens, or from particular ſtations and offices, are known by conſidering the true ends of the union, the rights of their governors, and the laws of their country, or the nature of any ſpecial offices they bear in it. It is ſuperfluous to

BOOK III. heap up common-place maxims, well known, but of difficult application to particular cases; a good man's heart will always be zealous for the interest of any innocent association for a publick interest, in which, by the Divine Providence, he is engaged; and will look upon this situation of his fortunes as the voice of God directing him to that part of his fellows who should be more peculiarly the objects of his affectionate concern. And he will always remember *, that in any tolerable constitution, he and his fellow-subjects owe innumerable advantages to the civil polity, to the laws, and to the whole body; even all their civilized education, their safety, their continual protection from innumerable injuries, and almost all accommodations and pleasures of life. They ought therefore to study the preservation and improvement of this constitution, and the general interest of this body, of which Divine Providence has made them a part, and recommended it to their zeal by all the generous principles in their soul. No worldly interest of ours, not life itself, should be reputed too dear to be sacrificed for its preservation; since in it is included the safety and all external happiness of great multitudes, both in the present age, and in those which shall succeed.

The CONCLUSION.

The admirable contrivance of our nature.

IV. From these general principles of the publick law of nations, as from those of the private law respecting individuals, we must discern the wonderful footsteps of Divine Wisdom in the constitution of our

* See *Plato's Crito.*

ſpecies. Since it is by following the very principles of our nature, the affections and feelings of our hearts, in that regular ſubordination of the more limited to the more extenſive, which our inward moral ſentiments recommend, and by the delightful exerciſe of the powers of reaſon which we are naturally prone to, that we obtain and ſecure to ourſelves and others both the nobleſt internal enjoyments, and the greateſt external advantages and pleaſures, which the inſtable condition of terreſtrial affairs will admit. CHAP. II.

The inſtability of every thing in this world.

But that we may not deceive ourſelves with falſe hopes, imagining a more ſtable external happineſs to be attainable by individuals or ſtates than nature will allow, and thus diſplace our ſouls from the only ſolid foundation of reſt, tranquillity, and joy, in the ſtable perſuaſion of a good Providence, governing all well, and ſecuring true happineſs to every worthy ſoul; in reſignation and truſt in it, and in the conſciouſneſs of our own conformity of diſpoſitions to this ſupreme Excellence; it muſt be of conſequence to attend well to the tranſitory, changeable, and periſhing nature, of every thing external.

All ſtates have in them the natural cauſes of diſſolution.

States themſelves have within them the ſeeds of death and deſtruction; what in the temerity, imprudence, or ſuperſtition of the firſt contrivers; what in the ſelfiſh, ambitious, or other meaner paſſions of the governors, and their ſubjects, jarring with each other and among themſelves; what in the oppoſitions of thoſe ſeeming intereſts which ſuch paſſions purſue; what in the weakneſs and inconſtancy of human virtues; and

BOOK III. in the proneneſs of men to luxury and preſent pleaſures, without attention to the conſequences. Theſe ſeeds, along with external force, and jarring national intereſts, have always occaſioned the diſſolution and death of every body politick, and will occaſion it as certainly as the internal weakneſs of the animal body and external cauſes will at laſt bring it to its fatal period. Good men indeed ſtudy, by all the art they are maſters of, to ward off and delay theſe cataſtrophes, as long as they can, from their friends or their country; ſuch kind offices are the moſt honourable and delightful employments they can have while they live. But he muſt little think of the order of nature who ſees not that all our efforts will be defeated at laſt, whether for the preſervation of individuals, or of the body politick.

Their duration in the univerſe inconſiderable.

Nineveh, Babylon, Cteſiphon, Perſepolis, the Egyptian Thebes, Carthage, once the ſeats of grand unwieldy empires, are now but obſcure antiquated names: Athens, Sparta, Crete, Syracuſe; the ſeats of ingenious arts and policy, are now the almoſt deſolate ſeats of Barbarians. Here we have no continuing cities. Compare the ſhort periods of their ſubſiſtance with the immenſe tide of duration which paſſed before they were known, or with that other boundleſs infinitude to enſue after they are gone and forgotten; and the moſt potent durable empires will appear tranſitory and but for a day.

External enjoyments and advantages, no ſecurities of ſtable happineſs.

Conſider all external things and enjoyments. We are ſpirits carrying about with us frail decaying putrifying carcaſes; that as yeſterday were embryoes, and ſhall in a few days be earth and bones. Our ſenſual

pleaſures are mean, paſſing in a moment, and often ſhameful. Our grandeur and wealth are impoſture, played upon ourſelves and others; an oſtentation of happineſs and ſecurity, while we have no other avenues to pleaſure than the vulgar, and remain expoſed along with them to all the ſame great calamities of life: to the ſickneſſes and death of ſuch as are deareſt to us, and their worſe corruptions by ignorance, ingratitude and other mean diſpoſitions of ſoul; to all the ſame pain and weakneſs both of body and mind; and, ſooner or later, to that uncertain period which may ſurprize us every moment, when we muſt quit all our earthly poſſeſſions, return into that ſilence we were in before we exiſted, and our places ſhall know us no more. If we are remembred for a few years, it is but in a little corner of the world; to the reſt of it we are as nothing: and, in a few more, both we and thoſe who remembred us ſhall be forgotten for ever. Grant we were always remembred; what is that to us who know it not?

Grandeur and fame are but vain.

Nimrod, Ninus, Cyrus, Alexander, Caeſar, Charlemain, Gengiſcan, what ſenſe of ſuffering have they now, when many repute them odious monſters, the ſcourges, the plagues of mankind? What joy have they in being called by others heroes and demi-gods? Theſe moſt obvious and certain reflections, frequently recalled, muſt abate thoſe keen paſſions about worldly intereſts which ſpur on the ambitious to all oppreſſions, and raiſe theſe wretched contentions which diſturb and at laſt deſtroy the beſt human polities.

The hopes of a future ſtate.

They muſt have an effect yet better on an attentive mind. An omnipotent and good God governs the

BOOK III. world. By the whole ſtructure of our nature we feel his approbation of virtue, his engagement on its ſide. He has at the ſame time formed our ſpecies capable of thoſe obvious reflections and extenſive views into infinitude, which ſhew the meanneſs, the vanity, the emptineſs of all worldly enjoyments; he has implanted in our hearts natural deſires, nay ardent affections, toward a more noble and laſting happineſs both for ourſelves and our fellows, and that in the moſt extenſive ſyſtem; and recommended theſe affections to us, and all beneficent actions flowing from them, as our greateſt dignity and perfection, while yet this world cannot gratify theſe deſires. Our advancing in this perfection which he recommends makes a future everlaſting ſtate after death appear as a part in his adminiſtration neceſſary to make our hearts approve it; and neceſſary too to all generous ſolid joy of a rational creature, who has natural affections toward its kind. His providence has ſo ordered, that this hope, this deſire is not peculiar to the wiſe, the learned, the civilized; but has ever been diffuſed among all mankind. Need we then diſtruſt that omnipotent and bountiful hand, which ſatisfies the deſires of every thing that liveth? No. Let us truſt in him, and be doing good after his example: and, as we ſee that all ſtates and cities upon earth are unſtable, tottering, and preſently to fall into ruins, LET US LOOK FOR ONE THAT HATH A SOLID FOUNDATION, ETERNAL, IN THE HEAVENS; WHOSE BUILDER AND MAKER IS GOD.

THE END.

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MDZ Münchener DigitalisierungsZentrum Digitale Bibliothek

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